

FINANCIAL SERVICES AND GENERAL GOVERNMENT APPROPRIATIONS FOR 2010

HEARINGS BEFORE A SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS HOUSE OF REPRESENTATIVES ONE HUNDRED ELEVENTH CONGRESS FIRST SESSION

SUBCOMMITTEE ON FINANCIAL SERVICES AND GENERAL GOVERNMENT APPROPRIATIONS

JOSÉ E. SERRANO, New York, *Chairman*

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NOTE: Under Committee Rules, Mr. Obey, as Chairman of the Full Committee, and Mr. Lewis, as Ranking
Minority Member of the Full Committee, are authorized to sit as Members of all Subcommittees.

DAVID REICH, BOB BONNER, LEE PRICE,
KARYN KENDALL, and ANDRIA OLIVER,
Subcommittee Staff

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FINANCIAL SERVICES AND GENERAL GOVERNMENT APPROPRIATIONS FOR 2010

THURSDAY, MARCH 19, 2009.

THE JUDICIARY FISCAL YEAR 2010 BUDGET

WITNESSES

HON. JULIA S. GIBBONS, CHAIR, COMMITTEE ON THE BUDGET, U.S. JUDICIAL CONFERENCE

JAMES C. DUFF, DIRECTOR, ADMINISTRATIVE OFFICE OF THE U.S. COURTS AND SECRETARY TO THE U.S. JUDICIAL CONFERENCE

CHAIRMAN SERRANO'S OPENING STATEMENT

Mr. SERRANO. The subcommittee will come to order.

We welcome our guests.

And we welcome the audience. Am I allowed to say that?

You know, when I sit in the Chair, in the Speaker's Chair, it is incredible. You are not allowed to say anything other than what you are supposed to say.

There was once a resolution on the House floor by Mr. Capuano congratulating the Boston Red Sox on the World Series. So he says, "And we do that, Mr. Chairman, Mr. Speaker," and I am in the Chair, "with all due respect to you being a Yankees fan." And I said, "You don't know the half of it." And they all went crazy, "No, you can't say that. You are only supposed to say." Decorum.

Today we will hear testimony on the fiscal year 2010 budget request of the Federal Judiciary.

The Judiciary is an independent branch of government which submits its funding requests directly to Congress rather than going through the Office of Management and Budget. Therefore, we already have their budget for 2010 and can hold this hearing, even though the President's budget will not arrive until next month.

The independent Federal Judiciary plays an important role in our constitutional system. Like other government institutions, the Judiciary needs sufficient resources to properly function and perform its constitutional duties. This subcommittee has made its priority to try to ensure sufficient funding for the proper functioning of the courts and their related functions included in the judicial budget, such as probation and pre-trial services and public defenders.

For fiscal year 2010, the Judiciary is requesting \$6.6 billion in discretionary funding, an increase of more than \$500 million above fiscal year 2009. I look forward to discussion of this request today.

Joining us to testify in support of the Judiciary's budget request is Judge Julia Gibbons of the U.S. Court of Appeals for the Sixth Circuit.

We welcome you.

Since 2004, Judge Gibbons has also served as Chair of the Budget Committee of the Judicial Conference. Judge Gibbons has testified before this subcommittee for the last few years, and we are pleased to have her again today.

Also appearing before the subcommittee today is James Duff, the director of the Administrative Office of the U.S. Courts. Mr. Duff was appointed to this position in 2006 by Chief Justice John Roberts. In the late 1990s, he served for 4 years as administrative assistant and chief of staff to Chief Justice William Rehnquist.

We welcome you both today, and we very much look forward to hearing from you about the resource needs of the Federal Judiciary.

At this time, I would like to recognize my colleague and partner in this endeavor, Mrs. Emerson.

RANKING MEMBER EMERSON'S OPENING STATEMENT

Mrs. EMERSON. Thank you so much for appearing before our subcommittee today.

An independent Judiciary that all of our citizens trust and respect which can resolve criminal, civil, and bankruptcy disputes in a fair and expeditious manner is a fundamental tenet of our Nation. In addition, the Judiciary's probation and pre-trial service officers supervise more than 200,000 offenders and defendants living in our communities, a critical law enforcement and public safety mission.

I have enormous respect for the essential work that the Federal Judiciary performs in administering our Nation's laws.

This subcommittee will do our best to ensure that you all have the resources needed to accomplish your important mission. However, I want to mention that your budget request does propose the increase that Chairman Serrano mentioned of over \$500 million, which is 8.6 percent above the fiscal year 2009 omnibus level. As the witnesses know, the Federal deficit is projected to be \$1.75 trillion this year. And the Congress will have some difficult spending decisions to make. But I assure you, I am going to work hard with the chairman to help make sure that the Federal Judiciary does have the resources to fill its constitutional duties.

Judge Gibbons and Director Duff, you all have tough, thankless jobs that are so extremely important. And I thank you all so much for being here today and look forward to hearing your testimony.

Mr. SERRANO. Thank you so much.

I ask my witnesses today, please, if you can keep your oral remarks to a maximum of 5 minutes, and your complete written statements will be submitted for the record.

Thank you.

Please proceed.

JUDGE GIBBON'S OPENING STATEMENT

Judge GIBBONS. Chairman Serrano, Representative Emerson, as noted, I am Julia Gibbons of the Sixth Circuit Court of Appeals and Chair of the Judicial Conference Committee on the Budget. With me today is Jim Duff, Director of the Administrative Office of the United States Courts.

Mr. Chairman, let me begin by thanking you and your colleagues for making the Judiciary a funding priority in the fiscal year 2009 appropriations cycle. The courts are in good financial shape for 2009. The funding you provided will allow us to finance continuing operations in the courts, as well as meet workload needs.

We also appreciate your addressing some of our courthouse construction needs when you provided funds to the General Services Administration to complete the San Diego U.S. Courthouse Annex, the Judiciary's top space priority, and to construct a new courthouse in Cedar Rapids, Iowa, through the Disaster Assistance Bill.

We are also grateful for several provisions of the 2009 Omnibus Appropriations bill, most notably an increase in the non-capital hourly rate paid to panel attorneys who represent indigent defendants under the Criminal Justice Act and authority, consistent with that of the Executive Branch, to contract directly for space alteration projects not to exceed \$100,000.

FY 2010 BUDGET REQUEST

Turning to our 2010 request, we are requesting \$7 billion, an increase of \$562 million over the fiscal year 2009 appropriations assumed when the budget was transmitted to the Office of Management and Budget in October of 2008. We are in the process of reexamining our 2010 request based on final results contained in our 2009 enacted appropriations along with updated assumptions on caseload, fee collections, and carryover. I am confident that we will be able to reduce our request.

Of the request before you, \$482 million, or 86 percent, of the increase is for standard pay and nonpay inflationary adjustments and for adjustments to base reflecting increases in our space, information technology, defender services, and court security programs. The remaining \$80 million of the requested increase is primarily for, first, 754 court support staff positions, largely in probation and pre-trial services offices and bankruptcy clerks' offices where the most critical workload increases exist; second, for program improvements in our information technology program; and third, for an enhancement in our defender services program to increase the hourly rate paid to private panel attorneys.

We are appreciative of the panel attorney hourly rate increase you provided us this year, but as we said before and as discussed in my written testimony, we believe an additional increase is warranted.

THE NATION'S ECONOMY

Let me talk briefly about a topic in the forefront of all our minds, our country's economy. A court system that is adequately funded and operates sufficiently will be an anchor in these uncertain times. The economic situations we face affect all aspects of the Ju-

diciary's work. Courts provide a forum for individuals or companies who are forced to file bankruptcy proceedings; for those who have suffered losses and are seeking civil monetary remedies; and for those accused of crimes.

Not surprisingly, we have seen a marked increase in bankruptcy filings, and we also anticipate an impact on civil and criminal workload as a result of the economic downturn.

Another area of continued growth is probation and pre-trial services, not only in terms of absolute numbers but also in the difficulty of the work due to the type of person being supervised. Today, over 80 percent of the offenders under supervision have served prison time as compared to 27 percent 20 years ago. And now almost two-thirds of the offenders have been convicted of narcotics trafficking, or violent sex or weapons offenses, rather than the 38 percent 20 years ago.

The offenders coming out of prison on supervised release generally have even greater financial, employment, and family problems than when they committed their crimes and they often lack adequate life skills to transition back into society smoothly. To ensure successful re-entry into the community, the Judiciary is developing a results-based management and decision-making framework for its community supervision program to determine the best methods for reducing recidivism and fostering long-term positive changes in individuals supervised.

COST CONTAINMENT

Our budget request reflects our continuing efforts to contain costs. We are now more than 4 years into an intensive effort to reduce costs throughout the Judiciary, and our cost containment program is producing results.

To date, we have achieved the most significant savings in our space and facilities program through an ongoing rent validation project in which court staff analyze the General Services Administration (GSA) rent billings and identify discrepancies so GSA can correct the bills and give us credits. GSA has cooperated with us in this endeavor.

In the information technology area, we are consolidating computer servers throughout the country which generate savings from reduced maintenance and equipment replacement costs.

We are also containing personnel costs. At its September 2007 meeting, the Conference approved recommendations from a major compensation study which will slow the growth in personnel costs throughout the Judiciary.

I assure you that containing costs is a top priority of the Judiciary.

While we look to contain costs where feasible, we continue to make investments in technologies that improve Federal courthouse operations, enhance public safety, and increase public access to the courts.

One of the innovations we are piloting is an electronic reporting system where defendants and offenders under supervision fill out routine reporting information at a kiosk prior to meeting with the probation officer. The officer can then spend more quality time

meeting with the client and focus on supervision issues instead of filling out paperwork.

The eJuror system is another pilot project that gives potential jurors the option of filling out their jury questionnaire electronically and also provides 24-hour-a-day, 7-day-a-week access to obtain updated jury service information. This is a time and cost saver for the courts and for the jurors.

I will conclude at this point and ask that my statement be placed in the record along with the statements of the Administrative Office of the U.S. Courts, the Federal Judicial Center, the U.S. Sentencing Commission, the U.S. Court of Appeals for the Federal Circuit and the U.S. Court of International Trade.

And I am, of course, happy to answer your questions.

[The information follows:]

STATEMENT OF
HONORABLE JULIA S. GIBBONS, CHAIR
COMMITTEE ON THE BUDGET OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
BEFORE THE SUBCOMMITTEE ON
FINANCIAL SERVICES AND GENERAL GOVERNMENT
OF THE
COMMITTEE ON APPROPRIATIONS OF THE
UNITED STATES HOUSE OF REPRESENTATIVES

March 19, 2009

INTRODUCTION

Chairman Serrano, Representative Emerson, and members of the Subcommittee, I am Judge Julia Gibbons of the Sixth Circuit Court of Appeals. Our court sits in Cincinnati, Ohio, and my resident chambers are in Memphis, Tennessee. As the Chair of the Judicial Conference Committee on the Budget, I come before you to testify on the Judiciary's appropriations requirements for fiscal year 2010. In doing so, I will apprise you of some of the challenges facing the federal courts. This is my fifth appearance before an appropriations subcommittee on behalf of the federal Judiciary and my third appearance before the Financial Services and General Government panel. Appearing with me today is James C. Duff, the Director of the Administrative Office of the United States Courts.

In addition to a discussion of our fiscal year 2010 request, my testimony will cover several policy issues that impact the federal courts. I will also update you on the Judiciary's efforts to contain costs as well as discuss several information technology innovations that are examples of the Judiciary's continual efforts to improve federal court operations.

STATEMENTS FOR THE RECORD

Mr. Chairman, in addition to my statement and Director Duff's, I ask that the entire statements of the Federal Judicial Center, the U.S. Sentencing Commission, the Court of Appeals for the Federal Circuit, and the Court of International Trade be included in the hearing record.

FISCAL YEAR 2009 FUNDING

Mr. Chairman and Representative Emerson, I begin today by thanking you and your colleagues for making the Judiciary a funding priority in the fiscal year 2009 appropriations cycle. The funding you provided, combined with greater-than-anticipated fee carryover balances and reduced requirements due to our cost-containment initiatives, will allow us to finance continuing operations in the courts and to address our most pressing workload needs. We are fully cognizant of the difficult funding choices you faced during conference on the omnibus bill and appreciate your willingness to support the needs of the Judiciary. We look forward to working closely with you and your staff in the future.

I again want to express our appreciation for the \$25 million in fiscal year 2008 emergency funding you provided the Judiciary to respond to workload associated with immigration enforcement initiatives being implemented by the Department of Homeland Security and the Department of Justice. That funding has allowed us to continue to hire critical staff while operating under a continuing resolution this year. I am pleased to say that our staffing levels are higher now than they were at the beginning of the fiscal year enabling us to meet our most urgent needs. This would likely not have been possible without the availability of the emergency funding. Finally, I would be remiss if I did not acknowledge your efforts to provide funding in the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009, for a new courthouse in Cedar Rapids, Iowa, funding that the devastating floods last year in the Midwest made necessary.

We also are grateful for several provisions included in the omnibus bill that will improve federal court operations. Of note are the increase in the non-capital hourly rate paid to private panel attorneys who represent eligible defendants under the Criminal Justice Act, which I will discuss later in my testimony; granting the Judiciary the same authority as the Executive Branch to contract directly for space alteration projects not exceeding \$100,000; making permanent certain cost-saving procurement authorities; and extending the temporary district judgeships in Kansas, the Northern District of Ohio, and Hawaii so that they do not expire when the next vacancy occurs.

ECONOMIC STABILITY

Mr. Chairman, the first topic I address is in the forefront of all of our minds and that is the state of our country's economy. As Chief Justice John G. Roberts, Jr. stated in his 2008 year-end report on the Judiciary "During these times, when the Nation faces pressing economic problems, resulting in business failures, home foreclosures, and bankruptcy, and when Congress is called upon to enact novel legislation to address those challenges, the courts are a source of strength. They guarantee that those who seek justice have access to a fair forum where all enter as equals and disputes are resolved impartially under the rule of law."

The Judiciary is devoted to preserving the rule of law, which is vital to sustain our free society. A court system that is adequately funded and operates efficiently can be an anchor in these uncertain times. The economic situation we face is far reaching and affects all aspects of the Judiciary's work. Courts provide a forum for individuals or companies who are forced to file bankruptcy proceedings, for those who have suffered losses and are seeking civil monetary remedies, and for those accused of crimes.

The impact of the deteriorating economy is already being felt by the courts. Many bankruptcy courts are experiencing significant increases in case filings compared to a year ago, and some have even returned to the high filing levels preceding the enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. In addition to existing responsibilities, Congress has been considering giving bankruptcy judges additional authorities to help address the mortgage crisis.

The bankruptcy system also plays a proactive role in trying to prevent consumer bankruptcies by spreading the message of financial responsibility to the citizens of this nation. A program started by one judge, using his own time and money, has now grown into a national financial literacy program conducted by bankruptcy judges, bankruptcy trustees, private attorneys and court staff. The Credit Abuse Resistance Education program (CARE) teaches the wise use of consumer credit to the group most at risk for credit abuse -- high school seniors and college freshman. Today, CARE has a presence in all 50 states and the District of Columbia. Throughout the Judiciary, many courts conduct additional bankruptcy outreach programs, focusing on high school students in the community.

We also anticipate an impact on our criminal and civil workload as a result of the economic downturn. As was the case with the savings and loan crisis in the 1980s, the courts will be a key venue for parties to address some of the causes and effects of the current financial crisis. The FBI has reported that it has thousands of fraud investigations under way. The resulting litigation has the potential to dwarf the savings and loan crisis, when the federal courts experienced a significant workload increase associated with the failures. Finally, the financial hardship that many are facing also could result in a rise in crime.

COST-CONTAINMENT SUCCESS

In 2004, the federal Judiciary looked into the future and saw that its "must pay" requirements would increase at a pace that would exceed available funding within a few years. Massive layoffs seemed inevitable and would have resulted in drastic reductions in service to litigants and the public. In response, the Judiciary initiated a comprehensive strategy that included sweeping cost-containment measures, allowing us to request more modest budget increases from this subcommittee and the Congress.

The Judiciary adopted a cost-containment strategy that year and has since embraced and institutionalized its economy objectives. As the Chief Justice stated in his year-end report, "...the courts have undertaken rigorous cost- containment efforts, a process begun four years ago, long before the current economic crisis." In fact, a substantial portion of the Chief Justice's report is devoted to a discussion of the Judiciary's cost-containment program, a reflection of the emphasis the Third Branch places on fiscal economy and stewardship.

Many of the initial ideas for constraining costs and growth have come to fruition; others are still in various phases of analysis and implementation. We are beginning to identify and explore new initiatives for the future. We have experienced great cooperation Judiciary-wide as we have moved forward on implementing policy and operational changes that reduce costs. Changes made to date have reduced future costs for rent, information technology, compensation, magistrate judges, law enforcement activities, law books, probation and pretrial services supervision work, and other areas. I would like to briefly recap what we have accomplished, summarize activities underway, and identify ideas in their initial stages of development.

Rent

In 2004, budget projections indicated that rental costs for existing and new facilities would increase six to eight percent annually, outpacing budget growth. The Judicial Conference recognized that controlling rent costs was absolutely critical to avoiding personnel reductions. The first step we took was imposing a national moratorium on courthouse construction from 2004 to 2006. The moratorium lasted 24 months and gave the Judiciary time to re-evaluate its space planning policies and practices and to enhance budgetary controls. Then, a national rent validation initiative identified discrepancies in General Services Administration (GSA) rent charges, giving the Judiciary rent credits, cumulative savings, and cost avoidance. This initiative resulted in improved quality control systems within both the GSA and the Judiciary.

The long-range facilities planning methodology for the Judiciary was re-evaluated to make cost a factor in whether a courthouse should be renovated or a new building should be constructed. The new asset management planning process approved by the Judicial Conference now examines costs, space needs, and functionality in assessing whether a new facility should be recommended at a particular location. It examines alternative space strategies and considers the costs and benefits of each to determine the best solution.

The Judicial Conference also established a cap of 4.9 percent in the average annual rate of growth for rent paid to GSA. To help maintain this rate of growth or less, each circuit judicial council is given a Circuit Rent Budget and must manage rent costs within its circuit. Councils decide which projects they can afford, and in some instances, deny requests for new space in order to stay within their allotment. Changes to the *U.S. Courts Design Guide* over the last two years also have contributed by reducing office size for staff and chambers space for judges. A new Memorandum of Agreement with the General Services Administration changes the way the Judiciary's rent is calculated for all federally-owned courthouses delivered in the future, providing the Judiciary with certainty about the amount of rent it will pay for a 20-year period. In fiscal year 2005 we projected our GSA rent bill would be \$1.2 billion in fiscal year 2010. I am pleased to report that, because of cost-containment, our current GSA rent estimate for fiscal year 2010 is now projected to be approximately \$200 million less, 17 percent below the amount projected in fiscal year 2005, due in large part to cost containment.

Courtroom Sharing

In furtherance of its aggressive cost-containment efforts, the Judicial Conference adopted at its September 2008 session a revised policy in which two senior district judges will share one courtroom in new courthouse construction projects. In addition, the Conference is taking steps to develop and implement a courtroom-sharing policy for magistrate judges. It will study the feasibility of an appropriate policy for sharing courtrooms by active district judges in large courthouses and also study courtroom use in bankruptcy courts to determine whether a sharing policy is needed.

Personnel

Turning to personnel costs, if caseload projections, staffing formulas, and compensation policies remain unchanged, by 2018 the Judiciary will spend almost \$1.4 billion above current

funding levels on existing court support staff. In addition, another \$100 million will be required to fund new staff as determined by projected caseload and current staffing formulas. While it may be necessary and appropriate to fund this increase, since anticipated future funding levels are unlikely to support that level of spending, the Judiciary is seeking ways to reduce our requirements or at least reduce our rate of growth. At its September 2007 meeting, based on a major court compensation study, the Judicial Conference approved recommendations that will slow the growth in personnel costs throughout the Judiciary. These recommendations altered the salary progression policy and established performance management guidelines as a fair and reasonable means to limit future compensation costs. In another action, the Judicial Conference adopted policies to reduce the personnel costs of judges' chambers staff. As part of the complement of chambers law clerks, judges are now limited to one career law clerk (who is typically paid more than a term law clerk), and the salary-setting policies for new law clerks were made more restrictive. We estimate these measures may save up to \$300 million from fiscal year 2009 through fiscal year 2017. Despite these cost-containment efforts, the growth in staffing costs is driven by the projected costs of existing staff rather than costs associated with staffing growth.

Information Technology

Information technology initiatives have enhanced efficiency and reduced costs. New technology and improvements in the Judiciary's national data communications network have allowed the consolidation of servers at a single location without compromising the performance levels of key applications. As a result of this initiative, the Judiciary reduced by 89 the number of servers needed to run the jury management program, producing savings of \$2.0 million in the first year and expected savings of \$4.8 million through fiscal year 2012. In addition, servers that run the case management system in the probation and pretrial services program were consolidated, with projected savings and cost avoidances of \$2.6 million through fiscal year 2012. The Judiciary expects expanded implementation of this initiative to result in significant information technology cost savings or cost avoidances. The recently completed consolidation of servers for the Judiciary's national accounting system will result in savings and cost avoidances totaling \$55.4 million through fiscal year 2012. The accounting system with consolidated servers also is faster, more responsive, and more secure.

Looking to the future in automation, the Judiciary is beginning to examine the next generation of electronic case filing and case-management systems in the courts. The current systems have already streamlined the case-filing process by allowing attorneys to file documents over the Internet and have freed up office space formerly used to house paper files. Next generation systems will use cutting-edge technology to provide a seamless case processing system between the bankruptcy courts, district courts, and courts of appeals. A new electronic voucher project for Criminal Justice Act vouchers has the potential for automating this paper-intensive process and enhancing the accuracy and timeliness of payments to private attorneys appointed under the Act.

The Judiciary looks at every aspect of a program to identify opportunities for improvement on an ongoing basis. Since its inception in 1993, the Bankruptcy Noticing Center

(BNC) has changed the process of noticing creditors by electronically retrieving data from participating courts' case management systems and automating the printing, addressing, batching, and mailing processes. The BNC generates notices in a fraction of the time and cost that would be required if produced by local courts. In addition to traditional mail noticing, the BNC offers a further enhancement to noticing with the Electronic Bankruptcy Noticing (EBN) program, which sends Bankruptcy notices via various electronic transmission methods. The EBN program, available to creditors who register for the service, eliminates the production and mailing of traditional paper notices and associated postage costs, while speeding public service. Through a new performance-based contract that went into effect in October 2008, further improvements are being made to this very successful initiative. The Judiciary could realize a ten-year reduction in contract rates of over \$50 million by providing financial incentives for the contractor to offer new features, more efficiencies, and improved customer service. The end result is a mechanism that encourages ongoing innovation and the adoption of new technology and processes by the BNC contractor.

INNOVATION IN THE FEDERAL COURTS

While we look to contain costs where feasible, we continue to make investments in technologies that improve federal court operations, enhance public safety, and increase public access to the courts. The Judiciary is a leader in taking state-of-the-market technology and adapting it to the courts' unique needs, and we continually look for innovative ways to apply new technologies to our operations. These investments are made possible through the funding we receive from Congress, and we are grateful for Congress's continuing support of our information technology program. Let me describe for you several of our innovations.

Electronic Reporting System Kiosks

Defendants and offenders must routinely submit reports on their status to their probation and pretrial services office as a condition of bail or post-conviction supervision. A three-month pilot project is currently underway in nine probation and pretrial services offices to test whether kiosks using the Electronic Reporting System (ERS) are a more effective way to gather routine information. When a client arrives in the office, he or she goes directly to the kiosk and touches the screen to begin. After a biometric fingerprint scan verifies identity, the client can update address and employment history and then is prompted through a series of questions in English or Spanish. After answering yes, no, or discuss with officer to each of the questions, the client is directed to take a seat. The ERS kiosk sends an e-mail to the probation or pretrial services officer alerting him or her that the client is waiting.

The Electronic Reporting System frees the officer to spend more quality time meeting with the client and focusing on supervision issues rather than on filling out paperwork. Not only does ERS gather the information electronically, but it downloads it into the Probation/Pretrial Services Automated Case Tracking System and automatically highlights for the officer any changes from the previous month's report. Ultimately, data from the kiosks and other electronic sources will provide the type of information needed for research and development of effective policies and procedures to optimize supervision methods and outcomes. This system is another

tool that can assist probation and pretrial services officers in performing more functions with fewer staff. It enhances efficiency and provides further opportunities to concentrate efforts on supervision.

On-Line eJuror System

Last December, the Judiciary began a pilot of an on-line eJuror system that gives potential jurors the option of submitting their juror qualification questionnaire and summons information forms electronically. Most members of the public called to jury duty will be able to visit the website of their federal court not only to submit their jury forms 24-hours a day and 7-days a week, but also to get updates on their jury service. Potential jurors still will receive print versions of the forms, but they will now have the option of either mailing in the print form or going on-line to complete it.

The eJuror system is a time- and cost-saver for both the courts and the public. Users can update personal information, submit a medical or other excuse, or request a deferral on-line. Jurors may also log into eJuror to learn their current juror status, whether they must report for jury duty or if they are excused. For those completing their jury service, they may use eJuror to print certificates of attendance, which may be required by employers, and to complete surveys about their experience. The courts will have fewer forms to process manually and less data to re-enter into the system, which will increase data reliability and save time.

Decision Support System

The September 2009 release of the first version of the Judiciary's new Decision Support System (DSS) puts an outcomes-based, data-driven system at the fingertips of probation and pretrial services officers. It gives them access to a warehouse of data with an array of tools to report and analyze information easily in a way that improves decision making. This version and future iterations will expand our capacity to measure outcomes and identify practices that are effective in reducing recidivism and enhancing the chances for long-term positive changes in the behavior of offenders supervised in the community by probation officers. Each district can look at its own trends and costs and compare them with other districts to determine if its performance is consistent with other districts and to identify what approaches work best. By consolidating information from the 94 districts into one database, probation and pretrial services officers, federal judges, and any federal court officer with a need for this information can access it. As DSS matures to identify best practices, it will be used to reshape our national policies and it will play a significant role in determining appropriate resource levels.

RETROACTIVITY OF CRACK COCAINE SENTENCING AMENDMENT

Mr. Chairman, last year I spoke at length about the U.S. Sentencing Commission's decision to make retroactive an amendment to the Sentencing Guidelines that reduced the base offense level for crack cocaine offenses. Retroactivity of the amendment became effective on March 3, 2008, which meant that incarcerated offenders became eligible to have their sentences

considered by the courts for a possible reduction and early release from prison. I would like to bring you up to date on how the courts have addressed this matter as well as the workload implications.

Well before the retroactivity effective date, courts were already preparing to address the expected surge in motions for reduced sentences. Court officials -- including judges, chief probation officers, clerks of court, and federal defenders -- along with federal prosecutors, met in Charlotte, NC and St. Louis, MO to conduct retroactivity summits and draft operational plans. This team effort and advance preparation was instrumental in providing for a smooth implementation on March 3, 2008, when 21,000 inmates became eligible for shorter prison sentences.

Three weeks after the Sentencing Guidelines amendment took effect, the sentences of more than 3,000 inmates nationwide had received court review and had been reduced. More than 1,000 inmates had been ordered released immediately into supervision in the community. Cases were prioritized so that those eligible for immediate release were considered first and then those eligible for early release in 2008 were processed before those eligible in 2009.

A preliminary report released by the U.S. Sentencing Commission shows that from March 2008 through January 21, 2009, judges granted 12,723 or 70 percent of the 18,109 applications for sentence reductions. Offenders whose motions to receive a reduction in sentence were granted, had been serving an average sentence of 136 months. The sentences were subsequently reduced by an average of 24 months, or 17 percent.

In 65 percent of the 5,386 denied motions, the courts determined that the offender was ineligible for a reduced sentence due to one of several factors, such as mandatory minimum statutes that controlled the sentence, the offender's status as a career offender, or because the quantity of crack cocaine involved in the case was very large. In another 11 percent of the denials, either the offense did not involve crack cocaine or the sentence was determined by a non-drug guideline. In 15 percent of the cases, the court denied the motion because the offender had benefitted from a downward departure or variance at the time of sentencing, because of other factors taken into consideration at the time of sentencing, because of post-sentencing or post-conviction conduct, or to protect the public. Denial in the remaining 9 percent of cases was for a variety of reasons, including the offender's ineligibility for a reduction, as previously determined by the U.S. Sentencing Commission.

The majority of granted motions, 82 percent, originated with defendants. Federal defenders met with their district's chief judge, chief probation officer, and United States attorney to work out procedures for handling the influx of cases. In most districts, the defender represented all of the eligible inmates, except in those cases where there were ongoing conflicts of interest. Private CJA panel attorneys represented former clients in some districts. Where appointed CJA counsel declined, or were unable, to resume their representation, in many cases the Federal Defender did so. Courts originated the motion in 18 percent of the cases, pursuant to their statutory authority to do so, after identifying potentially eligible defendants for whom reduction motions had yet to be filed. Court initiation was necessary in some cases which were

many years old and in districts with a large number of cases where it was impossible to locate and contact the original counsel.

In order to rule on the cases, judges relied on supplemental reports related to crack sentencing. Probation officers submitted 24,073 of these reports in fiscal year 2008. In preparing the supplemental reports for the courts, probation officers reviewed the original presentence reports, judgments, and statements of reasons to verify that defendants were eligible for reductions in sentence. For an eligible defendant, the officer would recalculate the guidelines offense level and identify the new imprisonment range for the court. To investigate a defendant's post-sentencing conduct, the officer would access records maintained in the Bureau of Prisons' (BOP) Sentry database, and in some cases contact the BOP case manager. The officer would also use this information to identify whether there were any remaining public safety considerations of which the court should be made aware.

By the end of fiscal year 2008, 4,969 inmates received reductions in their sentences and were released from imprisonment and began their terms of supervised release. Due to careful planning by probation staff, and close coordination with BOP officials, procedures were developed to facilitate the reentry of these offenders. Typically, probation officers are notified of an inmate's projected release date months in advance, and many inmates spend months at a community-based residential reentry center (RRC) before commencing supervised release. Shortly after the effective date of the amendment, however, many of these inmates were released within days or weeks of the reduction in their sentence. In response, probation officers were required to assess the offender's proposed living arrangements quickly and alert the BOP and the courts if a suitable residential plan was not in place. In some cases, the conditions of supervised release had to be modified to require the offender to reside in a RRC for a short time while alternative living arrangements could be put into place.

The workload impact of the early release of these inmates has been somewhat mitigated by the fact that these cases are spread across the country. By the end of fiscal year 2008, all but three districts had commenced supervision on an offender who had received a reduction in sentence. Only seven districts were required to commence supervision on more than 100 offenders. Because the most significant impact of the amendment was expected in the first year after it became effective, it appears the courts and the probation system have, thus far, absorbed the unexpected surge of workload without the need for additional resources. As these offenders continue to be released from imprisonment, adequate resources will be needed to facilitate their safe reentry into the community.

STAFFING INCREASES AND THE JUDICIARY'S CASELOAD¹

Our fiscal year 2010 budget request includes \$30 million for an additional 754 court support staff positions primarily in probation and pretrial services offices and bankruptcy and

¹Unless otherwise stated, caseload figures reflect the 12-month period ending in June of the year cited (i.e., 2009 workload reflects the 12-month period from July 1, 2008 to June 30, 2009).

district clerk's offices. The greatest increases are in the bankruptcy clerks' and probation and pretrial services offices where the most critical workload increases - in numbers and complexity - exist. While slight declines in criminal and civil filings are projected nationally, some district clerks' offices have increasing workloads and some others require additional staff to address staffing shortfalls caused by reduced allotments over a number of years.

As indicated in the caseload table in our fiscal year 2010 budget request, 2009 caseload projections are used to compute fiscal year 2010 staffing needs. Our projections indicate that caseload will increase slightly in probation (+3%), pretrial services (+3%), and increase substantially for bankruptcy filings (+27%). For 2009, we are projecting declines in civil (-3%), criminal (-4%), and appellate (-5%) filings. Let me discuss some recent trends and caseload drivers and offer some context for these projections.

Probation and Pretrial Services

Workload in our probation and pretrial services programs continues to grow. The number of convicted offenders under the supervision of federal probation officers hit a record 120,051 in 2008 and is expected to increase again in 2009 to 123,600. In addition to the increased workload, the work of probation officers has become significantly more challenging. In 1988, 27 percent of the offenders under supervision had served time in prison. By 2008, the percentage had climbed to 81 percent. As these figures indicate, probation officers deal with fewer individuals sentenced to probation in lieu of prison, reflecting the continued trend of increasingly challenging offenders being released to the community. The challenge is further apparent when one considers the offenses for which these persons are under supervision. For example, in 1998, 29 percent of these offenders were convicted of narcotics trafficking offenses and 9 percent were convicted of either violent, sex, or weapons offenses. In 2008, 46 percent were convicted in drug cases and 19 percent were convicted of either violent, sex, or weapons offenses.

Offenders coming out of prison on supervised release generally have greater financial, employment, and family problems than when they committed their crimes, and they often lack adequate life skills to transition back into society smoothly. Officers help offenders either to re-establish or secure for the first time appropriate housing, employment, and legitimate community relationships. Successful re-entry improves the likelihood that offenders will pay fines and restitution to victims and become law-abiding taxpaying citizens.

Using a variety of resources, whether it be working closely with a therapist to change the treatment approach for a sex offender, partnering with state and local agencies to sponsor a job fair for offenders, or spending a week in a forest performing community service with a group of offenders, probation officers utilize every means possible to change behavior. When offenders do not respond, and when there is a risk of harm to the community, probation officers take corrective steps that include seeking a change in release conditions or a revocation that may result in a return to prison.

In order to produce positive outcomes, the Judiciary is developing a results-based management and decision-making framework for its community supervision program. The goal is to collect, analyze, and use data from a variety of sources in order to employ the best methods for reducing recidivism and fostering long-term positive changes in individuals supervised. On an ongoing basis, the Judiciary wants to test underlying assumptions about the relationship between supervision practices and supervision outcomes.

Bankruptcy Filings

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), implemented in October 2005, initially reduced bankruptcy filings, but there have been large increases over the past two years. We forecast that filings will again exceed the one-million mark, with an increase of 27 percent in 2009 to 1,226,100. The state of the economy, particularly as it impacts home foreclosures and credit availability, is a major factor in the number of personal bankruptcies – which constitute the majority of bankruptcy cases. The economic downturn is also causing an increase in business bankruptcies, some of which are very large, complex Chapter 11 cases.

The number of filings alone is not the sole indicator of overall workload. BAPCPA created new docketing, noticing, and hearing requirements that make addressing the petitions far more complex and time-consuming. The actual per-case work required of the bankruptcy courts has increased significantly under the new law, and a new work measurement formula that reflects this additional work was used to develop the fiscal year 2010 budget request.

Appellate Filings

Appellate caseload increased slightly from 58,809 filings in 2007 to 59,406 filings in 2008. At the time the budget was transmitted to OMB, projections indicated filings could decline by 5 percent to 56,700 in 2009. More recently, we are seeing an upward movement in criminal appeals, primarily as a result of the crack cocaine sentencing amendments. The bulk of the crack cocaine sentencing appeals are filed pro se and have increased the work of appellate court staff attorneys. Pro se prisoner litigants usually file hand-written documents, which the attorneys have to decipher and interpret before appropriate action can be determined. During the year ending September 2008, pro se appellants filed 2,369 criminal appeals, an increase of 120% over the number of criminal appeals filed during the previous year. In addition to appeals arising from the crack cocaine sentencing amendments, appeals raising issues related to changes in sentencing guidelines law remain a complex and challenging portion of the appellate court workload.

Civil Filings

Civil filings in the district courts generally follow a more unpredictable filing pattern. In 2005 civil filings reached a record 282,758 filings, declined to 244,343 filings in 2006, then increased again to 272,067 filings in 2007. The increase in 2007 was due primarily to asbestos diversity case filings in the Eastern District of Pennsylvania. After adjusting for this spike in 2007, civil case filings will remain relatively steady with 249,800 filings projected in 2009.

Criminal Filings

Criminal filings in the federal courts increased in 2008 for the first time in the last several years. It now appears that the additional resources provided to fill Assistant U.S. Attorney positions, particularly in the five judicial districts along the southwest border with Mexico have had an impact on criminal case filings. Also, in fiscal year 2008, the Department of Justice received \$5 million to hire 40 additional AUSAs to prosecute sexual exploitation of children cases under the Adam Walsh Act. Since our 2008 criminal caseload projection did not take into account the impact additional AUSAs would have on criminal case filings, the \$45.4 million Congress provided the Judiciary over the last two years – \$20.4 million in fiscal year 2007 and \$25.0 million in fiscal year 2008 – to address immigration-related workload positioned the courts well in the short term to respond to the increased workload that materialized. With a new Administration in 2009 and accompanying personnel and prosecutorial policy changes, filings are projected to decline 4 percent in 2009 to 67,100 filings.

Naturalization Ceremonies

Mr. Chairman, I would like to talk briefly about one statistic that does not show up in our workload tables and that is the number of people who become naturalized citizens in federal court ceremonies. Last year federal judges naturalized 450,275 people. Sometimes we administer the oath of citizenship to just one individual standing before a judge, and sometimes hundreds or thousands take the oath in a large arena. Either way, judges and court staff put a good deal of effort into making naturalization ceremonies meaningful for the new citizens and their families. For example, as part of the ceremony, one federal judge regularly shares his story about coming to this country as a refugee and becoming a naturalized citizen. Other courts invite Members of Congress, distribute flags, have Boy Scout troops display the colors, or feature bands playing patriotic music.

The Judiciary makes every effort to provide the highest level of service. In the District of Puerto Rico, the Chief Judge has been known to make house calls to administer the oath when people were too sick or too old to come to the courthouse. In the Eastern District of New York, the court added 16 additional ceremonies to its original schedule to accommodate more citizens prior to the election. At many ceremonies, the courts work with the U.S. Citizenship and Immigration Services, the Social Security Administration, the county clerk's office and the U.S. Postal Service to have representatives on site to provide information and help process social security, voter registration, and passport applications.

FISCAL YEAR 2010 BUDGET REQUEST

For fiscal year 2010, the Judiciary is seeking an 8.7 percent overall increase above the fiscal year 2009 appropriations the Judiciary assumed when the budget was transmitted to OMB in October 2008. The courts' Salaries and Expenses account, which funds clerks and probation offices nationwide, requires a 7.6 percent increase. Having recently received an enacted appropriation, we will be revising our 2010 request and expect the overall requested increase will be reduced in light of the higher enacted level as well as other updated information. We will

work with you and your staff to update our requirements during the course of the year. Fiscal year 2010 appropriations requirements for each Judiciary account are included at Appendix A.

This fiscal year 2010 request includes modest staffing increases in the courts in order to address increased workload requirements, as well as to obtain funding for several much needed program enhancements. We believe the requested funding level represents the minimum amount required to meet our constitutional and statutory responsibilities. While this may appear high in light of the fiscal constraints under which you are operating, I would note that the Judiciary does not have the flexibility to eliminate or cut programs to achieve budget savings as the Executive Branch does. The Judiciary's funding requirements essentially reflect basic operating costs, of which more than 80 percent are for personnel and space requirements.

Eighty-six percent (\$482 million) of the \$562 million increase being requested for fiscal year 2010 funds the following base adjustments, which represent items for which little to no flexibility exists:

- Standard pay and benefit increases for judges and staff. This does not pay for any new judges or staff but rather covers the annual pay adjustment and benefit increases (e.g., COLAs, health benefits, etc.) for currently funded Judiciary employees. The amount budgeted for the cost-of-living adjustment is 4.2 percent for 2010.
- An anticipated increase in the number of on-board senior Article III judges and average number of filled Article III judgeships.
- The projected loss in non-appropriated sources of funding due to the decline in carryover balances available in fiscal year 2010 versus the level available to finance the fiscal year 2009 financial plan (see discussion on the following page).
- Space rental increases, including inflationary adjustments and new space delivery, court security costs associated with new space, and an inflationary increase in Federal Protective Service charges for court facilities.
- Adjustments required to support, maintain, and continue the development of the Judiciary's information technology program which, in recent years, has allowed the courts to "do more with less" – absorbing workload increases while downsizing staff.
- Mandatory increases in contributions to the Judiciary trust funds that finance benefit payments to retired bankruptcy, magistrate, and Court of Federal Claims judges, and spouses and dependent children of deceased judicial officers.
- Inflationary increases for non-salary operating costs such as supplies, travel, and contracts.

- Costs associated with Criminal Justice Act (CJA) representations. The Sixth Amendment to the Constitution guarantees that all criminal defendants have the right to the effective assistance of counsel. The CJA provides that the federal courts shall appoint counsel for those persons who are financially unable to pay for their defense.

After funding these adjustments to base, the remaining \$80 million requested is for program enhancements. Of this amount:

- \$35 million is for additional staff and associated costs to address fiscal year 2010 workload requirements (401 FTE) and six additional magistrate judges and staff (26 FTE).
- \$26 million will provide for telecommunications and information technology enhancements, and courtroom technology improvements for the Court of Appeals for the Federal Circuit.
- \$10 million to increase the non-capital panel attorney rate from \$114 to \$142 per hour. I will discuss this requested increase in more detail in a moment.
- \$6 million is requested for the Supreme Court's perimeter security and roof system repairs.
- \$3 million would provide for necessary investments in court security, such as expansion of explosive trace detection systems; library renovations and new equipment at the Court of Appeals for the Federal Circuit; education and training enhancements at the Federal Judicial Center; new reimbursable positions (3 FTE) for the defender services program; and the start-up costs for one new federal defender organization.

Non-Appropriated Sources of Funding

I would like to discuss briefly the non-appropriated sources of funding that the Judiciary uses to partially finance its operations and how they impact our appropriations needs. In addition to appropriations from Congress, the Judiciary collects fees from bankruptcy and civil case filings, from users for on-line access to court records, and from other sources. By statute, a portion of the fees collected in any given year is available to lower the need for appropriated funds in that year. In addition, fees not utilized during the year they are collected may be carried over to the next fiscal year to offset appropriations requirements in that year. Every fee dollar collected that is not needed to finance current year needs represents a dollar less that the Judiciary must seek from Congress in the following year.

In formulating the Judiciary's fiscal year 2010 budget request, we made certain assumptions regarding the level of fees and carryover that would be available to finance fiscal year 2010 requirements. Because the projection for carryover balances are below the level that was available to finance fiscal year 2009 operations, the fiscal year 2010 request includes \$57 million to replace the anticipated decline in carryover balances. While it is premature for me to

identify a specific amount, I am confident that we will not need the full \$57 million we requested to replace carryover balances. This is due to several factors, including the courts' frugal spending while operating under a continuing resolution for five months and increasing bankruptcy filings which would result in higher than anticipated fee collections. As we did this past year, we will keep the Subcommittee apprised of changes to fee and carryforward projections that could impact our fiscal year 2010 appropriation needs as we move through fiscal year 2009. The Judiciary will submit the first of two fiscal year 2010 budget re-estimates to the Subcommittee in May 2009.

INCREASE IN NON-CAPITAL PANEL ATTORNEY RATE

We request your consideration of the program enhancement in our budget that will ensure effective representation for criminal defendants who cannot afford to retain their own counsel. We are requesting \$10.2 million to increase the non-capital panel attorney rate to \$142 per hour, effective January 2010. A panel attorney is a private attorney who serves on a panel of attorneys maintained by the district or appellate court and is assigned by the court to represent financially-eligible defendants in federal court in accordance with the Criminal Justice Act (CJA). In the fiscal year 2009 omnibus spending bill, the Subcommittee approved an increase in the non-capital rate paid to these panel attorneys from \$100 to \$110 per hour, and provided a cost-of-living adjustment to the capital rate from \$170 to \$175 per hour. These new rates took effect for work performed on or after enactment of the fiscal year 2009 appropriation.

While we are very appreciative of the increase to \$110 per hour for non-capital work, we believe a more significant increase is required to enable the courts to attract and retain enough qualified attorneys to accept appointments and to provide them a fair rate of pay. This is critical in order for the Judiciary to ensure that persons represented by panel attorneys are afforded their constitutionally guaranteed right to effective assistance of counsel.

We believe there is a direct relationship between the lack of qualified panel attorneys available to take CJA appointments and the significant financial difficulties panel attorneys encounter maintaining their legal practices. Predominantly solo and small-firm lawyers take on CJA cases, and these panel attorneys must first cover their overhead costs. With overhead costs of approximately \$70 per hour, at the \$110 rate, that leaves a net average of only \$40 per hour, before taxes. We believe that this net rate of \$40 per hour, when compared to the net national average "market rate" of \$176 per hour for non-CJA private criminal cases, prevents the courts from attracting sufficient numbers of qualified attorneys to take CJA appointments because those attorneys can obtain higher pay on non-CJA cases. Each time a panel attorney is asked by the court to accept a non-capital CJA appointment, he or she must consider the inherent "opportunity" cost associated with the higher hourly rate he or she could otherwise earn on a non-CJA case.

The CJA authorized the Judicial Conference to implement annual cost-of-living adjustments (COLAs) to panel attorney rates, subject to congressional funding. If the statutory COLAs provided to federal employees (the base employment cost index component only) had

been provided to panel attorneys on a recurring, annual basis since 1986, the authorized non-capital hourly rate for fiscal year 2010 would be \$142². The Judicial Conference is mindful of the constrained federal budget environment and, therefore, for last year's budget request it proposed attaining the authorized rate in two stages, an \$18 per hour increase in fiscal year 2009 from \$100 to \$118 per hour, with a second increase to the full authorized rate in fiscal year 2010. The Judiciary is committed to restoring fully the non-capital panel attorney rate in a cost-conscious manner by implementing the authorized rate over two years. The pending 2010 request reflects the second year of this two-step approach.

I will close on this topic by reiterating that the Judiciary greatly appreciates the \$110 non-capital rate Congress provided in fiscal year 2009, but the concern remains that, after overhead is considered, the rate still does not provide compensation that will attract enough qualified panel attorneys to take on the complex work involved in federal criminal cases. I urge the Subcommittee to provide the funding necessary to increase the non-capital panel attorney rate to \$142 per hour in fiscal year 2010.

CONTRIBUTIONS OF THE ADMINISTRATIVE OFFICE

I would like to briefly outline the important work performed by the Administrative Office (AO) of the United States Courts on behalf of the entire Judiciary. Year in and year out, the AO provides critical support to the courts. With less than 2 percent of the resources that the courts have, the AO does a superb job of supporting our needs.

The AO has key responsibilities for judicial administration, policy implementation, program management, and oversight. It performs important administrative functions, but also provides a broad range of legal, financial, program management, and information technology services to the courts. None of these responsibilities has gone away and new ones are continually added, yet the AO staffing level is lower than it was 15 years ago. As an example, despite no new positions, the AO has been instrumental in implementing the Judiciary's cost-containment strategy which has achieved significant savings and cost avoidances.

In my role as Chair of the Judicial Conference Committee on the Budget, I have the opportunity to work with many staff throughout the AO. They are dedicated, hard working, and care deeply about their role in supporting this country's system of justice.

The fiscal year 2010 budget request for the Administrative Office is \$84 million. The AO's request represents a current services budget, no additional staff or program increases are sought. All of the requested increase is necessary to support current services, mainly standard pay and general inflationary increases.

²In comparison, since May 1, 2002, the U.S. Department of Justice has paid \$200 per hour to retain private counsel, with five years of experience, to represent current or former federal employees in civil, congressional, or criminal proceedings (pursuant to 28 C.F.R. § 50.16).

I urge the Subcommittee to fund fully the Administrative Office's budget request. The increase in funding will ensure that the Administrative Office continues to provide program leadership and administrative support to the courts, and to lead the effort for them to operate more efficiently. Director Duff discusses the AO's role and budget request in more detail in his testimony.

CONTRIBUTIONS OF THE FEDERAL JUDICIAL CENTER

I also urge the Subcommittee to approve full funding for the Federal Judicial Center's request of \$27.5 million for fiscal year 2010.

The Center's director, Judge Barbara Rothstein, has laid out in greater detail the Center's needs in her written statement. I simply add that the Center plays a vital role in providing research and education to the courts. The Center's research and its educational programs are highly respected and valued for their quality and objectivity. The Judicial Conference and its committees request and regularly rely on research projects by the Center. The Center's educational programs for judges and court staff have a well deserved reputation for relevance, balance, and quality and greatly help judges and court employees do their jobs well.

The Center has made good use of its limited budget. It uses several technologies to deliver information and education to more people more quickly and inexpensively. The relatively small investment you make in the Center each year (less than one-half of one percent of the Judiciary's budget) pays big dividends in terms of the effective, efficient fulfillment of the courts' mission.

CONCLUSION

Mr. Chairman, I hope that my testimony today provides you with some insight into the challenges facing the federal courts, the important role we play in providing stability in uncertain times, as well as what we are doing to contain costs and become more efficient. I realize that fiscal year 2010 is going to be a very tight budget year as increased spending to address the economic downturn will result in further constrained domestic discretionary spending. Our commitment to contain costs and to explore new and better ways of conducting our judicial business are unfailing. These initiatives have significantly reduced the Judiciary's appropriations requirements without adversely impacting the administration of justice. I know you agree that a strong, independent Judiciary is critical to our nation. I urge you to provide the funding needed to enable us to maintain the high standards of the United States Judiciary.

Thank you for your continued support of the federal Judiciary. I would be happy to answer any questions the Subcommittee may have.

Appendix A

**Judiciary Appropriations
(\$000)**

Appropriation Account	FY 2009 Assumed Appropriation	FY 2010 Request	Change FY 2010 vs. FY 2009	% Change FY 2010 vs. FY 2009
U.S. Supreme Court				
Salaries & Expenses	\$69,777	\$74,740	\$4,963	7.1%
Care of Building and Grounds	18,447	14,568	(3,879)	-21.0%
Total	88,224	89,308	1,084	1.2%
U. S. Court of Appeals for the Federal Circuit	30,933	36,981	6,048	19.6%
U.S. Court of International Trade	19,598	21,517	1,919	9.8%
<i>Courts of Appeals, District Courts & Other Judicial Services</i>				
Salaries & Expenses				
Direct	4,796,456	5,162,252	365,796	
Vaccine Injury Trust Fund	4,253	5,428	1,175	
Total	4,800,709	5,167,680	366,971	7.6%
Defender Services	848,971	982,646	133,675	15.7%
Fees of Jurors & Commissioners	59,802	63,401	3,599	6.0%
Court Security	428,858	463,642	34,784	8.1%
Subtotal	6,138,340	6,677,369	539,029	8.8%
Administrative Office of the U.S. Courts	79,049	83,963	4,914	6.2%
Federal Judicial Center	25,597	27,486	1,889	7.4%
Judiciary Retirement Funds	76,140	82,374	6,234	8.2%
U.S. Sentencing Commission	16,225	17,056	831	5.1%
<i>Direct</i>	\$6,469,853	\$7,030,626	\$560,773	
<i>Vaccine Injury Trust Fund</i>	\$4,253	\$5,428	\$1,175	
Total	\$6,474,106	\$7,036,054	\$561,948	8.7%

Judge Gibbons' Oral Remarks

Chairman Serrano, Representative Emerson, and members of the Subcommittee, I am Judge Julia Gibbons of the Sixth Circuit Court of Appeals and Chair of the Judicial Conference Committee on the Budget. Appearing with me today is Jim Duff, the Director of the Administrative Office of the United States Courts.

Mr. Chairman, let me begin today by thanking you and your colleagues for making the Judiciary a funding priority in the fiscal year 2009 appropriations cycle. The courts are in good financial shape for 2009. The funding you provided will allow us to finance continuing operations in the courts as well as to meet workload needs. We also appreciate that you addressed some of our courthouse construction needs when you provided funds to the General Services Administration to complete the San Diego U.S. Courthouse annex, the Judiciary's top space priority, and to construct a new courthouse in Cedar Rapids, Iowa through the Disaster Assistance bill. We also are grateful for several provisions of the omnibus bill, most notably an increase in the non-capital hourly rate paid to private

panel attorneys who represent eligible defendants under the Criminal Justice Act, and authority, consistent with that of the Executive Branch, to contract directly for space alteration projects not exceeding \$100,000.

Turning to our fiscal year 2010 budget request. The Judiciary is requesting \$7 billion dollars for fiscal year 2010, an increase of \$562 million over the fiscal year 2009 appropriations assumed when the budget was transmitted to OMB in October 2008. We are in the process of re-examining our FY2010 request based upon the final results contained in our FY2009 enacted appropriations, along with updated assumptions on caseload, fee collections and carryover. I am confident that we will be able to reduce our request. Of the request before you, \$482 million, or 86 percent, of the increase is for standard pay and non-pay inflationary adjustments and for adjustments to base reflecting increases in our space, information technology, defender services, and court security programs. The remaining \$80 million of our requested increase is primarily for 754 court support staff positions largely in probation and pretrial services offices and bankruptcy clerk's offices where the most critical workload

increases exist, program improvements in our information technology program, and an enhancement in our defender services program to increase the hourly rate paid to private panel attorneys representing indigent defendants in federal criminal cases. We are appreciative of the rate increase you provided this year but, as we have said before and as discussed in my written testimony, we believe an additional increase is warranted.

Let me talk briefly about a topic in the forefront of all of our minds and that is the state of our country's economy. A court system that is adequately funded and operates efficiently can be an anchor in these uncertain times. The economic situation we face affects all aspects of the Judiciary's work. Courts provide a forum for individuals or companies who are forced to file bankruptcy proceedings, for those who have suffered losses and are seeking civil monetary remedies, and for those accused of crimes. Not surprisingly, we have seen a marked increase in bankruptcy filings and we also anticipate an impact on our criminal and civil workload as a result of the economic downturn.

Another area of continued growth is probation and pretrial services, not only in terms of absolute numbers, but also in complexity because of the type of person being supervised. Today, over 80% of the offenders under supervision have served time in prison as compared to 27%, 20 years ago. And now almost two-thirds of the offenders have been convicted of narcotics trafficking, violent, sex, or weapons offenses rather than 38%, 20 years ago. The offenders coming out of prison on supervised release generally have even greater financial, employment, and family problems than when they committed their crimes, and they often lack adequate life skills to transition back into society smoothly. To ensure successful re-entry into the community, the Judiciary is developing a results-based management and decision-making framework for its community supervision program to determine the best methods for reducing recidivism and fostering long-term positive changes in individuals supervised.

The Judiciary's budget request reflects our continuing efforts to contain costs. We are now more than four years into an intensive effort to reduce costs throughout the Judiciary, and our cost containment program

is producing results. To date, we have achieved the most significant savings in our space and facilities program through an ongoing rent validation project in which court staff analyze GSA rent billings and identify discrepancies for GSA to correct and give us rent credits. GSA has been very cooperative in this endeavor. In the information technology area we are consolidating the deployment of computer servers throughout the country which generates savings from reduced maintenance and equipment replacement costs. We are also containing personnel costs. At its September 2007 meeting the Judicial Conference approved recommendations from a major court compensation study which will slow the growth in personnel costs throughout the Judiciary. I want to assure the Subcommittee that containing costs is a top priority of the Judiciary.

While we look to contain costs where feasible, we continue to make investments in technologies that improve federal court operations, enhance public safety, and increase public access to the courts. One of these innovations we are piloting is an Electronic Reporting System where defendants and offenders under probation supervision fill out routine

reporting information at a kiosk prior to meeting with the probation officer. The officer can then spend more quality time meeting with the client and focusing on supervision issues rather than on filling out paperwork. The eJuror system is another pilot project that gives potential jurors the option of filling out their juror qualification questionnaire electronically and also provides 24-hours a day, 7-days a week access to obtain updated jury service information. This is a time- and cost-saver for both the courts and the public.

I will conclude at this point and ask that my entire statement be placed in the record, along with the statements of the Administrative Office, the Federal Judicial Center, the Sentencing Commission, the Court of Appeals for the Federal Circuit, and the Court of International Trade.

I would be happy to answer any questions.



JULIA SMITH GIBBONS

United States Circuit Judge
970 Federal Building
Memphis, TN 38103

Judge Julia Smith Gibbons was appointed to the United States Court of Appeals for the Sixth Circuit by President George W. Bush and took office on August 2, 2002. Prior to her appointment as circuit judge, she served as United States District Judge for the Western District of Tennessee, being appointed by President Ronald Reagan and taking office on June 24, 1983. She served as Chief Judge of the district court from 1994-2000.

Judge Gibbons was appointed by Chief Justice William H. Rehnquist to chair the Budget Committee of the Judicial Conference of the United States in December 2004. From 1994-99 she was chair of the Judicial Resources Committee of the Judicial Conference. From 2000-03 she was a member of the Judicial Panel on Multidistrict Litigation.

Prior to becoming a federal district judge, Judge Gibbons served as judge of the Tennessee Circuit Court for the Fifteenth Judicial Circuit from 1981-83. She was appointed to that position by Tennessee Governor Lamar Alexander in 1981 and was elected to a full term in 1982.

From 1979 to 1981 Judge Gibbons was Legal Advisor to Governor Alexander. She was in the private practice of law from 1976 to 1979 with the Memphis firm of Farris, Hancock, Gilman, Branam & Lanier. In 1975-76 she served as law clerk to the late Honorable William E. Miller, Circuit Judge, United States Court of Appeals for the Sixth Circuit. She was admitted to the Tennessee bar in 1975.

Judge Gibbons received her J.D. degree from the University of Virginia School of Law. At Virginia she was elected to Order of the Coif and was a member of the Editorial Board of the Virginia Law Review. She received her B.A. magna cum laude from Vanderbilt University in 1972 and was elected to Phi Beta Kappa.

Judge Gibbons is an elder at Idlewild Presbyterian Church and a former President of the Memphis Rotary Club.

Judge Gibbons was born and grew up in Pulaski, Tennessee. She has been married since 1973 to William L. Gibbons, who is District Attorney General for Shelby County. They have two children, Rebecca Carey Gibbons and William L. Gibbons, Jr.

Statement of Hon. Barbara J. Rothstein, Director, Federal Judicial Center
March 19, 2009

House Committee on Appropriations
Subcommittee on Financial Services & General Government

Hon. José E. Serrano, Chairman
Hon. Jo Ann Emerson, Ranking Member

I am Barbara Rothstein. I have been the Center's director since 2003, and a district judge since 1980. I am pleased to submit the Center's 2010 budget request on behalf of the Center's Board, which the Chief Justice chairs, and which approved this request.

I and the Center are grateful for the efforts of Congress to provide, over the past two fiscal years, not only full adjustments to base but also funding for a few of the positions that have been left vacant since 2001 due to funding constraints.

Our 2010 request is for \$27,486,000, a \$1,889,000 (or 7.4%) increase over 2009. The increase includes \$1,294,000 for standard adjustments to base, \$195,000 for two full-time equivalent positions (three positions for approximately six months), and \$400,000 for needed education and training programs.

Before providing more detail on this request, let me provide you with a little background on the Center and its activities. I hope with this description to convey to you the important contribution that the Center makes to the effective and efficient functioning of the federal courts.

I. The Center's Contribution to the Courts

The Center's mission is to provide objective, well-grounded empirical research and balanced, effective educational programs for the courts.

The courts, and particularly the Judicial Conference of the United States, as well as Congress and the public, are regular consumers of the Center's research projects. They rely on the Center for thorough, unbiased, well-documented research. Most of the forty major research projects under way in 2008 were requested by the Judicial Conference and its committees. Examples include developing new case weights for bankruptcy courts, the amount and type of use of courtrooms, and examining cases involving sealed documents. Not only does Center research help judges decide cases efficiently and fairly, it also helps the judiciary and Congress make better-informed decisions about policies and procedures affecting the courts.

Center education programs are vital to judges and court staff. Orientation programs enable new judges to assume their responsibilities quickly. Continuing education programs bring judges up to date on topics ranging from case-management techniques to new statutes and case law. For example, in 2008 the Center, in collaboration with the Judicial Conference Committee on Information Technology and the Administrative Office, launched a new web page to educate judges about ways to use information technology in case management and chambers operations. As part of the same effort, we began a multi-year effort to train court personnel to better assist judges in

the use of technology in their day-to-day work. We also developed and presented to bankruptcy judges a timely seminar on capital markets. It was so highly acclaimed that we repeated it and followed that up with a telephone conference “mini-seminar” on the topic.

Court staff, who play a critical role in supporting judges and ensuring the efficient operation of the courts, rely on the Center for educational programs and materials that help them do their jobs better (for example, integrating new technologies and executing cost-containment strategies). The Center’s Professional Education Institute, which provides basic and advanced programs on leadership and management for managers and supervisors at all levels in the courts, is a key component of court staff training. The Center works closely with the Administrative Office on many of these programs and projects.

The Center uses a wide range of tools to deliver education, including in-person programs and hard-copy publications, along with an array of technologies, such as satellite television broadcasting, teleconferencing, the Internet and the courts’ intranet, web-conferencing, and streaming video. All these delivery means are needed to meet the diverse needs of a diverse population of judges, managers, and staff in a cost-effective way.

The importance of the Center’s educational programs is reflected in their use by the courts. All Center training is voluntary; large numbers of judges and court staff choose to participate in Center programs and use its services because they know the Center’s products will help them do their jobs better. In 2008, over 10,500 employees of the courts (including almost 2,300 judges) attended Center programs in person—over half did so in their own districts. Over 1,400 court staff participated in Center video, audio, and web conferences, and thousands of judges and court staff watched Center television programs, accessed resources and downloaded materials from the Center’s intranet site, and used Center publications.

II. The Center Has Managed Its Appropriation Responsibly

Understanding the need for fiscal responsibility, the Center has made careful use of its appropriation each year. As I noted earlier, we use a wide variety of cost-effective delivery tools to provide education and information to judges and staff efficiently. The various delivery tools we use have enabled us to reach a larger and larger audience for less money than we could with only one or two of these media. But new technology also requires a highly professional staff with diverse skills in order to take full advantage of these tools and to identify and implement newer technologies as they emerge.

In-person programs remain a vital part of our education efforts. Here we economize in several ways. Most in-person staff training (and some judge education) is done by bringing faculty to the courts for local training. Most programs to which participants must travel are conducted in hotels in large cities where we can negotiate reasonable rates and take advantage of competitive airfares. We conduct smaller seminars in collaboration with several outstanding law schools, enabling us to avoid faculty and overhead costs.

We stretch our appropriation by working closely with our sister agencies, the Administrative Office of the U.S. Courts and the U.S. Sentencing Commission. We regularly consult with them to avoid duplicative efforts, and we often provide them an opportunity to convey their information to the courts at Center-sponsored programs.

III. The Center's Fiscal Year 2010 Request

Our request for 2010 is modest—standard adjustments to our 2009 base, \$195,000 to enable us to fill three new positions and \$400,000 for education and training programs that are needed but which we cannot currently afford without cutting equally important programs elsewhere.

New Positions

The sum of \$195,000 will enable us to fill three critically needed positions for which funds were requested but not appropriated in 2009. These positions are some of those that have been left vacant since 2001 due to funding constraints and are needed to enable the Center to address critical workload needs in education, research, and information technology areas in order to continue to provide for the increasing demand for education and training from judges and their staffs. The additional positions will also help develop and provide the important additional education and training programming for which we are also requesting additional new funding and which I discuss below.

Enhanced Education and Training Programming

As mentioned above, the Center relies heavily on distance education technologies, but the need for training continues to grow faster than the resources to meet it. While educating judges about new legal developments, ethical requirements, and effective case management practices is always necessary, judges and court managers also seek additional education in effective management practices and uses of technology, and the increased number of court staff attorneys need additional specialized continuing legal education. Without the requested additional \$400,000 in education and training program funds, as well as the three new positions, the Center will not be able to keep pace with the demand for its education and training programs from judges and court staff trying to deal with rapidly changing technology, new legal developments, demanding caseloads and budget shortfalls and staff cutbacks in their courts.

Thank you for your careful consideration of our request. I would be pleased to respond to any questions you may have.

**STATEMENT OF THE UNITED STATES SENTENCING COMMISSION
BEFORE THE COMMITTEE ON APPROPRIATIONS
SUBCOMMITTEE ON
FINANCIAL SERVICES AND GENERAL GOVERNMENT**

March 19, 2009

Chairman Serrano, Ranking Member Emerson, and members of the Subcommittee, the United States Sentencing Commission thanks you for the opportunity to submit this statement in support of its appropriations request for fiscal year 2010. As has been the case over the past few years, the Commission's statutory mission as set forth in the Sentencing Reform Act of 1984 continues to be both reaffirmed and significantly impacted by recent United States Supreme Court decisions regarding federal sentencing policy. Full funding of the Commission's fiscal year 2010 request will ensure that the Commission can continue to fulfill its statutory mission.

RESOURCES REQUESTED

The Commission is requesting \$17,056,000 for fiscal year 2010, representing a five percent increase over the fiscal year 2009 appropriation [request] of \$16,225,000. The Commission has consistently recognized over the past several years that it must use its allotted resources carefully and that Congress expects the same. The Commission accordingly has tailored its fiscal year 2010 request narrowly and is seeking a limited increase over its fiscal year 2009 appropriation [request] to account for inflationary increases and certain adjustments for personnel costs.

JUSTIFICATION FOR THE COMMISSION'S APPROPRIATIONS REQUEST

The statutory duties of the Commission include, but are not limited to: (1) developing sentencing guidelines to be determined, calculated, and considered in federal criminal cases; (2) collecting, analyzing, and reporting federal sentencing statistics and trends; (3) conducting research on sentencing issues in its capacity as the clearinghouse of federal sentencing data; and (4) providing training on sentencing issues to federal judges, probation officers, law clerks, staff attorneys, defense attorneys, prosecutors, and others.

As described in previous submissions to Congress, United States Supreme Court decisions beginning with *United States v. Booker*¹ in 2005 have significantly impacted the Commission's work in fulfillment of its statutory duties. *Booker*, which rendered the federal sentencing guidelines advisory, and subsequent Supreme Court caselaw continue to reaffirm the importance of the Commission's role in "writing Guidelines, collecting information about actual district court sentencing decisions, undertaking research, and revising the Guidelines accordingly."

While reaffirming the ongoing nature of the Commission's work, these decisions also continue to have a significant impact on that work. The Commission has continued its core mission to review and revise the guidelines, taking into account 18 U.S.C. §

¹ 543 U.S. 220 (2005).

3553(a) and other congressional statutes and directives and in response to information it receives from sentencing courts, Congress, the Executive Branch, federal defenders, and others. The Commission also has continued to provide increased training on federal sentencing issues, including application of the guidelines, to federal judges, probation officers, law clerks, staff attorneys, prosecutors, defense attorneys, and others.

Furthermore, in response to these Supreme Court cases, the Commission has continued to refine its data collection, analysis, and reporting efforts to provide real-time data about federal district court sentencing practices and trends. The Commission must continue to disseminate sentencing information in real-time and in a thorough manner so that Congress and others can be fully informed and advised on federal sentencing policy.

Despite the impact of these cases, the Commission is not requesting program increases for fiscal year 2010. The Commission has worked diligently over the past several years to maximize its resources overall and appreciates the support and funding it has received from Congress.

Sentencing Policy Development and Guideline Promulgation

As part of its statutory duty to develop sentencing guidelines to be determined, calculated, and considered in federal criminal cases, the Commission promulgated a number of guideline amendments during the amendment cycle ending on May 1, 2008, which, absent congressional action to the contrary, became effective on November 1, 2008. The Commission promulgated guidelines and guideline amendments to implement enacted legislation that included the Court Security Improvement Act of 2007, the Emergency and Disaster Assistance Fraud Penalty Enhancement Act of 2007, the Honest Leadership and Open Government Act of 2007, and the Animal Fighting Prohibition Enforcement Act of 2007. The Commission also promulgated guidelines and guideline amendments for immigration-related offenses, drug offenses, and consumer product offenses.

In addition, the Commission gave retroactive effect, on March 3, 2008, to the amendment for crack cocaine offenses it promulgated in 2007 and worked closely with the federal criminal justice community to ensure efficient application of the retroactivity amendment. The Commission collaborated with the Criminal Law Committee of the United States Judicial Conference to develop a one-page statement of reasons form for courts to use in ruling on crack cocaine retroactivity motions. It also participated in two symposia on crack cocaine retroactivity sponsored by the courts in January and February 2008 for judges, probation officers, prosecutors, and defense attorneys. The Commission supplemented these symposia with a series of training programs at several of the circuits and districts most impacted by the retroactivity of the crack cocaine amendment. The Chair of the Commission provided testimony on crack cocaine retroactivity at hearings on this issue held by the Judiciary Committees of both the Senate and House of Representatives.

For the amendment cycle ending May 1, 2009, the Commission is considering several guideline amendments in response to recent congressional action, such as the

Identity Theft Enforcement and Restitution Act of 2008, the Ryan Haight Online Pharmacy Consumer Protection Act of 2008, the Drug Trafficking Vessel Interdiction Act of 2008, the Let Our Veterans Rest in Peace Act of 2008, and the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008. The Commission also is considering amendments in miscellaneous areas of the criminal law, including offenses involving counterfeit bearer obligations of the United States and the resolution of several circuit conflicts. These proposed amendments respond to input received from the criminal justice community and reflect the Commission's ongoing work to refine the guidelines in accordance with its statutory obligations.

As with all proposed guideline amendments, the Commission is considering guideline proposals for the amendment cycle ending May 1, 2009 pursuant to a collaborative process for sentencing policy development and guideline promulgation that is consistent with the Sentencing Reform Act of 1984. That process continues to include significant outreach to, and input from, representatives of the criminal justice community, as well as the review of pertinent literature, data, and case law. For example, in November 2008, the Commission held a public briefing session on identity theft, online pharmacy offenses, and drug trafficking vessel interdiction. During this briefing session, the Commission received testimony from the Federal Defenders Service, the Department of Justice, the Drug Enforcement Administration, the Federal Trade Commission, the United States Coast Guard, the Business Software Alliance, and the Commission's Victims Advisory Group.

The Commission also is continuing the review it began during the past year on alternatives to incarceration, which included a two-day symposium the Commission held in July 2008 that brought together members of all three branches of government, as well as federal sentencing practitioners and academics.

In addition, the Commission is marking the 25th anniversary of the enactment of the Sentencing Reform Act of 1984 by holding regional public hearings on the operation of the federal sentencing system, including the impact on the system of *Booker* and subsequent caselaw. The Commission held the first of these regional public hearings in Atlanta, Georgia, on February 10-11, 2009, at which it received input from witnesses that included federal appellate and district court judges, probation officers, defense attorneys, law enforcement officials, academics, and others. Several other regional hearings are anticipated.

Collecting, Analyzing and Reporting Sentencing Data

In fulfillment of its statutory duties related to collecting, analyzing, and reporting federal sentencing statistics and trends, the Commission collects documentation from the district courts on over 70,000 federal felony and class A misdemeanor cases annually.² From this documentation, the Commission extracts, analyzes, and reports information on

² See 28 U.S.C. § 994(w), which requires the chief judge of each district court, within 30 days of entry of judgment, to provide the Commission with: (1) the charging document; (2) the written plea agreement (if any); (3) the Presentence Report; (4) the judgment and commitment order; and (5) the statement of reasons form.

national sentencing trends and practices. As with other aspects of the Commission's statutory mission, data collection, analyzing, and reporting efforts continue to be impacted by the Supreme Court's recent sentencing-related decisions. Specifically, in addition to expediting the reporting of data analyses in its Annual Report and Sourcebook of Federal Sentencing Statistics, the Commission has since *Booker* disseminated key aspects of this data on a real-time and quarterly basis and provided trend analyses of the changes in federal sentencing practices.

In fiscal year 2008, the Commission received sentencing documentation on 76,478 original sentencings. Since March 2008, the Commission has also collected real-time data from the courts on over 18,000 motions filed for retroactive application of its 2007 crack cocaine amendment. The Commission continues to collect and regularly report real-time data on crack cocaine retroactivity.

Information Technology Issues Associated with Data Collection, Analysis and Reporting

Over the past four fiscal years, the Commission has apprised Congress of its development of an electronic document submission system that enables courts to electronically submit the five statutorily required sentencing documents directly to the Commission. The electronic document submission system recently reached a notable milestone in that, by the end of fiscal year 2008, all of the 94 judicial districts were using the system. The electronic document submission system has greatly alleviated the courts' need to spend judicial resources on copying, bundling, and mailing hard copies to the Commission.

During fiscal years 2009 and 2010, the Commission intends to continue to make technological advancements related to data collection, analysis, and reporting. For example, working with the courts, the Commission is continuing to advance the evolution of its electronic submission system to a web-based system with the ability to accept both the statutorily required sentencing documents and data fields from the courts. Specific projects include the continued planning, coordination, and implementation of a pilot project for the expanded use of this web-based system.

Increased Requests for Commission Work Product

In addition to providing quarterly and annual data reports on national sentencing practices, the Commission continues to experience increased requests for particularized data analysis from Congress. The Commission is statutorily required to assist Congress in assessing the impact proposed criminal legislation will have on the federal prison population. These assessments are often complex, time-sensitive, and require highly specialized Commission resources. The Commission also has experienced an increase in requests for information from Congress on issues such as drugs, fraud, immigration, and sex offenses. The Commission increasingly is providing data to assist Congress during oversight and legislative hearings on proposed changes to substantive areas of the criminal law. Informational requests from the Congressional Research Service have also increased. The Commission anticipates that congressional requests will continue to

increase throughout fiscal year 2010 and looks forward to fulfilling them in a timely and thorough manner.

The Commission also responds to requests for data analyses from federal judges. For example, the Commission provides to each chief district judge and chief circuit judge a yearly analysis of the cases sentenced in the district or circuit with a comparison of the caseload and sentencing practices in that district or circuit to the nation as a whole. The Commission's ability to provide these analyses on demand and with real-time data provides a unique resource to judges.

Conducting Research

The Sentencing Reform Act of 1984 directed the Commission to establish a research agenda as part of its role as the clearinghouse on federal sentencing statistics and policy and to assist the courts, Congress, and the Executive Branch in the development, maintenance, and coordination of sound sentencing policies. The Commission regularly analyzes the current and prior fiscal years' data to identify the manner in which the courts are sentencing offenders and their use of the guidelines in that work and uses this analysis when considering proposed changes to the guidelines. Similarly, some analyses are published by the Commission as a resource for the criminal justice community. In fiscal year 2008, for example, the Commission published a research report on federal escape cases to inform a legal question pending before the Supreme Court regarding whether a defendant's failure to report for confinement involves conduct that presents a serious potential risk of physical injury to another such that a conviction for escape based on that failure to report is a "violent felony" within the meaning of the Armed Career Criminal Act, 18 U.S.C. § 924(e).

In fiscal year 2009, the Commission released publications on a variety of topics and reports that included the changing composition of the federal criminal caseload, an overview of federal sentencing in fiscal year 2007, and the use of alternatives to incarceration in the federal system. The Commission anticipates releasing other publications throughout fiscal year 2009 and 2010 and also plans to begin a multi-year recidivism study of crack cocaine offenders for whom the courts have granted motions for retroactive application of the 2007 crack cocaine amendment.

Training and Outreach

The Sentencing Reform Act of 1984 also directed the Commission to provide specialized sentencing training and guidance to the criminal justice community. In fulfillment of this statutory duty, the Commission provides training, technical assistance, and other educational programs to federal judges, probation officers, law clerks, staff attorneys, prosecutors, defense attorneys, and others throughout the year. The Commission's training and outreach efforts have expanded in each of the past four years, particularly in response to the Supreme Court's recent sentencing-related decisions and to the Commission's annual promulgation of guideline amendments. In fiscal year 2008, for example, commissioners and Commission staff conducted training programs in all twelve circuits and most of the 94 judicial districts. The Commission has provided training to

districts throughout the country on retroactive application of its 2007 crack cocaine amendment. Commissioners and Commission staff also participated in numerous other academic programs, symposia, and circuit conferences as part of the ongoing discussion of federal sentencing issues.

In addition, during the past year, the Commission instituted an outreach program by which Commission staff visit district courts throughout the country to view sentencing proceedings conducted in the district. The program gives Commission staff the opportunity to view sentencing proceedings with respect to which the Commission collects data and to provide district court judges with the opportunity to provide direct feedback to the Commission about federal sentencing issues, including application of the guidelines.

In fiscal year 2009, the Commission will provide training to the district and circuit courts on a number of federal sentencing issues, including recently promulgated guidelines and guideline amendments. In June 2009, the Commission will hold its annual national training program in New Orleans, Louisiana that will include hundreds of participants. The Commission anticipates that these expanded efforts and increased requests for training will continue throughout fiscal year 2010.

SUMMARY

The Commission remains uniquely positioned to assist all three branches of government in ensuring sound and just federal sentencing policy. Located in the judicial branch and composed of federal judges, individuals with varied experience in the federal criminal justice community, and ex-officio representatives of the Executive Branch, the Commission is an expert, bipartisan body that works collaboratively with Congress. It therefore sits at the crossroads where all three branches of government intersect to determine federal sentencing policy.

The Commission appreciates the funding it has received from Congress to meet its ever-increasing needs. Full funding of the Commission's fiscal year 2010 request will ensure that the Commission continues to fulfill its statutory mission to develop federal sentencing guidelines, collect, analyze and report federal sentencing statistics and trends, conduct research on sentencing issues, and provide training to the criminal justice community. The Commission respectfully asks that Congress fully support the Commission's fiscal year 2010 appropriation request of \$17,056,000 so that it can continue its statutory role as a leader in federal sentencing policy.

**STATEMENT OF PAUL R. MICHEL
CHIEF JUDGE, UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT
BEFORE THE SUBCOMMITTEE ON TRANSPORTATION,
TREASURY, HOUSING, URBAN DEVELOPMENT,
THE JUDICIARY, DISTRICT OF COLUMBIA
OF THE COMMITTEE ON APPROPRIATIONS
OF THE UNITED STATES HOUSE OF REPRESENTATIVES**

MARCH 19, 2009

Mr. Chairman, thank you for allowing me to submit my statement supporting the United States Court of Appeals for the Federal Circuit's fiscal year 2010 budget request.

OVERVIEW

Our request totals \$36,981,000, an increase of \$6,048,000 (19.6%) over the fiscal year 2009 assumed appropriation of \$30,933,000. Seventy-nine percent of this increase (\$4,794,000) is to pay for four adjustments to base. These include funds for the following:

- 1) For building out into chambers the leased space for five senior judges;
- 2) To annualize salaries and benefits for staff for new senior judges.
- 3) For the Court's Congressionally- and contractually-mandated adjustments to base; and
- 4) To annualize the cost of salaries and benefits for 12 law clerks hired in fiscal year 2009.

Twenty-one percent (\$1,254,000) is to fund four critical program increases as follows:

- 1) For a cooling unit for the network server room;
- 2) For seven new positions each funded for six months;
- 3) For technology in the courtrooms; and
- 4) For library renovations.

PART 1: ADJUSTMENTS TO BASE

- 1) *Thirty-four percent of the total increase (\$2,063,000) is requested to complete the build-out of space for senior judges who will help expand our court's judicial output in 2010. The build-out will occur within the shell rental already provided for in the court's budget base and assumed in the fiscal year 2009 appropriation. Renting and building out this leased space for five senior judges is the Federal Circuit's highest funding priority.*

Eight of the Court's 12 judges will be eligible to retire or take senior status by 2010 – and up to six of the eight can be expected to make the move. The judges currently eligible for senior status include me, Pauline Newman, Haldane R. Mayer and Alan D. Lourie. Those eligible in 2009 include Alvin A. Schall and Arthur J. Gajarsa and, in 2010, William C. Bryson and Timothy B. Dyk. Judges become eligible for senior status when their combined age and years of court service total 80. They are not required to accept senior status, but once they do, it opens a vacancy on the Court.

One of the judges currently eligible for senior status is already over 80 years old. One other judge is in his mid-70s. Two others are in their late 60s. Historically, there is little reliable data to predict when a judge will choose to take senior status, and they typically give little advance notice of their decision to cut back their activities.

When an active judge becomes a senior judge, he or she is replaced by a new appointment to the court. The newly-appointed judge takes an active judge's chambers, and new chambers must be secured for the displaced senior judge. The Federal Circuit space allocation at the National Courts Building complex currently houses all four of its senior judges. One of these four senior judges, however, is working temporarily in inadequate space. At present, there is no more space available in the existing courthouse complex for even one additional senior judge.

Although we could, theoretically, wait until a newly-appointed judge is nominated and confirmed before we address the impending problem of our lack of space, we must tackle the problem proactively because of inherent delays. In consideration of the critically important work that senior judges do for the Federal Circuit and in deference to their stature, senior judges simply cannot be asked to share chambers here or work in an office shell while we hasten to build out suitable chambers for them.

We have discovered that the lead time to lease property in the Washington, DC Central Business District is quite long. GSA has been negotiating on our behalf to lease space for senior judges since the middle of 2006. Before GSA would agree to undertake lease negotiations on our behalf, we had to attest to them that funds would be available to pay the rent. We anticipate finally signing a lease in the next few months, but the search for space has been a long and frustrating process.

We expect to begin leasing a nearby generic office space to accommodate chambers for five senior judges in the third quarter of fiscal year 2009. Again, we could have opted to lease smaller spaces for chambers for individual judges as they opted to take senior status. But the court has required that the five chambers be located at one off-site address to minimize the cost of providing security for these judges if they are all located together and to maximize administrative efficiency. Five is a mid-range number the court believes to be reasonable in providing space for fewer than all prospective senior judges. The U.S. Court of Federal Claims and the Office of Special Masters for the Vaccine Injury Compensation Trust Fund have joined us in seeking leased space in this nearby building. This will result in a savings for the Judiciary in security and in some administrative expenses.

The leased space will need to be converted to secure chambers suitable for the performance of judicial business. This construction work will have to be completed before a senior judge could relocate and will likely take many months to complete. The funding requested combined with funds we are assuming that we will receive in fiscal year 2009 will enable us to complete building out all five of the chambers in time for our new senior judges to occupy them.

- 2) *Twenty-two percent of the requested increase (\$1,311,000) is for the Court's Congressionally- and contractually-mandated adjustments to base (such as COLAs and escalation in rent and contracts).*
- 3) *Six percent of the requested increase (\$371,000) is to annualize salaries and benefits for staff for new senior judges. This request assumes that funding to hire these employees for six months was appropriated in fiscal year 2009.*
- 4) *Seventeen percent of the requested increase (\$1,049,000) is to annualize the cost of salaries and benefits for 12 additional law clerks. This request assumes that funding to hire these employees for six months was appropriated in fiscal year 2009.*

In our fiscal year 2009 Budget Request, the court requested funds to hire an additional law clerk for each of the court's twelve active judges for six months. Four law clerks are the norm at each of the other eleven Federal Appeals Courts; however, Federal Circuit judges have been struggling to manage with three. The Federal Circuit's need for additional law clerks is based on an increased caseload in highly technical and complex appeals.

Patent infringement cases make up one-third or more of the Federal Circuit docket. The number of patent infringement cases has grown by more than 25 percent in the 15 years since a third law clerk was provided in each chambers. The difficulty and complexity of patent infringement and other intellectual property cases have increased exponentially in recent years.

Most of the patent cases now filed in our court are highly technical and require great insight and judgment. The issues presented in these cases often involve arcane breakthroughs on the frontiers of science, technology, manufacturing, engineering, mathematics and medicine. In such cases legal judgments must be made, not only about the law itself but often on the basic underlying technical innovation, with few if any precedents, analogies or objective metrics to apply to help determine the outcome.

In patent infringement cases, timeliness is a critical issue because the speed of technological change can render a delayed decision essentially ineffectual in a rapidly-changing economic marketplace. In the appeal of such cases to the Federal Circuit, the question often is not only whether the law was correctly applied in the lower court decision, but also whether the science or technology was understood correctly by the trial judge or jury.

In patent infringement and other intellectual property cases most judges and their law clerks must master a field of science and draw the best conclusions from scarce and limited resources. Because judges are assigned to panels randomly and not by specific subject matter expertise, all judges and their law clerks on the Federal Circuit are required to engage in extensive and fundamental scientific inquiries in deciding legal issues presented in these complex cases. The practical effect is that each judge with his or her Chambers staff is engaged in a simultaneous series of complicated exercises, as opposed to deciding a series of often less complex single issue cases.

A fourth law clerk would help ensure that the judges of the United States Court of Appeals for the Federal Circuit can give each case that comes before them the utmost in timely and thoughtful deliberation.

PART 2: PROGRAM INCREASES

- 1) *Six percent of the requested increase (\$350,000) will fund a cooling unit and an upgrade of the electrical circuitry for the court's network server room. This request assumes that we did not receive funds for the project in fiscal year 2009.*

The court is re-requesting funds to augment the cooling system for the secured room that houses the Court's network servers. The room was converted many years ago from an unused small office or closet; it was never engineered or equipped as a proper network server room, with adequate cooling, electrical circuitry and other infrastructure. Greater safety will result.

Because our courthouse building is maintained by GSA, the cooling system for the building does not run on a 24-hour, 365 days-a-year basis due to federal guidelines. Therefore it is necessary for the court to have the server room cooled by an independent system to assure that the room remains cool enough to protect the servers. If a server becomes overheated, it shuts down and suspends network service to the judges and court staff. This situation can cause expensive damage to expensive equipment, and can create significant hardship for the court.

- 2) *Nine percent of the requested increase (\$516,000) will fund the salaries and benefits for seven support staff positions for six months. These include: a chief pre-argument attorney/circuit mediator; a court mediator; a mediation assistant/secretary/paralegal; a telecommunications specialist; an internal controls analyst; a computer security specialist; and an emergency preparedness coordinator.*

Many of the new positions for which we have requested funding are positions that the Judicial Conference of the United States has recognized as performing critically important functions in court operations. The positions already exist in most regional circuits. The Federal Circuit is requesting the funds and FTEs to permit the court to fill these positions that have proven to be so important to the Judiciary.

The Circuit Mediator, Court Mediator, and Mediation Assistant save significant amounts of time and money for the court. The Telecommunications Specialist will greatly increase the responsiveness to telecommunications problems and it is estimated will also realize cost savings over outside contractors. The Internal Controls Analyst will help ensure that the court improves its operational efficiency and will help prevent fraud, waste, abuse and mismanagement of resources. The Computer Security Specialist will help maintain security of the court's information technology network and prevent our systems from becoming vulnerable. Finally, an Emergency Preparedness Coordinator will focus on the court's emergency response posture. Given the proximity of the Federal Circuit to the White House, it is very important to coordinate with White House security in preparing for threats and emergencies.

- 3) *Three percent of the requested increase (\$188,000) is to update the technology in our third courtroom.*

We are re-requesting **\$188,000** to implement badly needed technological enhancements in our third courtroom, consistent with long-standing policy of the Judicial Conference. Such enhancements include video-conferencing infrastructure for remotely conducting and recording oral arguments; under-floor cabling for safety, security and easy access; and additional equipment and training to bring the courtroom into the 21st century. The technological enhancements would allow judges and their law clerks and counsel to use personal computers during arguments.

- 4) *Three percent of the requested increase (\$200,000) is for library renovations.*

We are re-requesting **\$200,000** to design and construct renovations to the Circuit Library, which has not been renovated since it opened in 1967. The requested funds are required to reorganize the library physically in order to allocate space more efficiently and provide appropriate room for patrons to access electronic resources.

CONCLUSION

In conclusion, when the Court of Appeals for the Federal Circuit initially submitted the fiscal year 2010 Budget Request, the request was conceived to meet the court's critical needs, and the additional funds were carefully measured against the benefits they would provide in achieving the court's mission. In light of the economic problems that our country now faces, 78 percent of the additional funding requested – that is, all of the adjustments and program increases except the general inflation funding – will have a stimulating effect on the economy. We will be using our increase to provide an additional six months of employment to 12 law clerks, to hire secretaries and law clerks for three senior judges, and to fill seven entirely new court positions that are judiciary standards. We will also be contracting out hammer-ready construction projects to build out off-site chambers for senior judges and to renovate our library. Finally, we will stimulate industrial production when we purchase and install a cooling unit in our server room and technological equipment in our third courtroom.

As we are finalizing the draft of this statement, the fiscal year 2009 omnibus spending bill is making its way through Congress. When this bill is signed into law, it will necessitate a revision of our Budget Request because the amount we assumed as our fiscal year 2009 appropriation when we formulated our fiscal year 2010 budget request is higher than the actual figure in the House-passed omnibus spending bill.

Mr. Chairman, I would be pleased to answer any questions the Committee may have or to meet with the Committee members or staff about our budget request. Thank you.

STATEMENT OF JANE A. RESTANI
Chief Judge
UNITED STATES COURT OF INTERNATIONAL TRADE
before
The Subcommittee of
Financial Services and General Government
United States House of Representatives

March 19, 2009

Mr. Chairman, Members of the Committee:

I would like to again thank you for providing me the opportunity to submit this statement on behalf of the United States Court of International Trade, which is established under Article III of the Constitution with exclusive nationwide jurisdiction over civil actions pertaining to matters arising out of the administration and enforcement of the customs and international trade laws of the United States.

The Court's budget request for Fiscal Year 2010 is \$21,517,000. This represents an overall increase of \$1,912,000, or 9.8 percent, over the Court's Fiscal Year 2009 enacted appropriation of \$19,605,000. As was the case with the Court's Fiscal Year 2009 request, the primary reason for the increase in the Fiscal Year 2010 budget request is a substantial increase in GSA rent charges, specifically in the shell rate that took effect in April 2009. Although the rent increase came into effect mid-way through Fiscal Year 2009, only in Fiscal Year 2010 will the Court feel its effects over the entire year. Hence, the Court is again asking for a rent driven increase in 2010. It is important to note that, as I stated in my Fiscal Year 2009 Budget request statement, the Court believes that GSA's appraisal, the basis for its shell rate, is overstated. As a result, the Court arranged for an independent appraisal analysis in Fiscal Year 2008. Based on that analysis, the Court appealed its shell rate rent, which was denied by GSA. Thus, the Fiscal Year 2010 rent increase includes this shell rate increase for the entire fiscal year of 2010. The rent increase also includes a continuation of the amortized costs of the Court's congressionally-approved security pavilion, which I discussed in my Fiscal Years 2008 and 2009 statements. The total GSA rent estimate for Fiscal Year 2010 is \$9,100,000, which is an increase of \$1,314,000 or 16.9 percent over the Fiscal Year 2009 rent estimate. To put these charges in perspective, these Fiscal Year 2010 rent charges represent 68 percent of the Court's total requested increase and 42 percent of the Court's total requested budget.

Despite the substantial increase in rent charges, which is outside of the Court's control, the Court continues to budget conservatively and only request funds that will provide for mandatory increases in pay, benefits and other inflationary factors, as well as funds for the

essential on-going operations of the Court. Subtracting the rent, the Court's request represents only a 4.8 percent increase over the Fiscal Year 2009 enacted appropriation. This modest increase includes increases in costs paid to the Federal Protective Service for basic and building-specific security surcharges. The security surcharges provide for the Court's pro-rata share of installing, operating, and maintaining systems for the critical and necessary security of the Federal Complex in lower Manhattan.

Also, through the use of its annual appropriation and the Judiciary Information Technology Fund, the Court continues to promote and implement the objectives set forth in its Long Range Plan. Implementation of these objectives provide access to the Court through the effective and efficient delivery of services and information to litigants, the bar, public, judges, and staff. As a national court, this access is critical in realizing the Court's mission to resolve disputes by (1) providing cost effective, courteous, and timely service, (2) providing independent, consistent, fair, and impartial interpretation and application of the customs and international trade laws and (3) fostering improvements in customs and international trade law and practice and improvement in the administration of justice.

To this end, the Court continues to aggressively implement its information technology and cyclical maintenance/replacement programs. In Fiscal Year 2008, the Court: (1) cyclically replaced two key servers: the Court's Database and Domain Name servers; (2) upgraded, replaced and supported desktop computers and monitors throughout the Court; (3) cyclically upgraded laptops with models that provide broadband capabilities; (4) in concert with the other Courts throughout the Judiciary, converted the Court's hosted on line server based library cataloging system known as Sirsi to a vendor hosted/managed system; (5) continued to support and maintain all technical equipment and software applications; and (6) evaluated the recommendations submitted by the consulting contractor for the design and implementation of a new video conferencing system and developed a course of action for proceeding with the Fiscal Year 2009 implementation phases. Additionally, in Fiscal Year 2008, the Court continued its cyclical maintenance program by: (1) refurbishing the case management section and the technical development support sections of the Clerk's Office; and (2) refurbishing two case file rooms and the confidential storage room for better space utilization.

In Fiscal Year 2009, the Court plans to expend funds to: (1) complete the design, purchase, and installation phases for the Court's upgraded video conferencing system, which is particularly relevant in light of the Court's nationwide jurisdiction; (2) replace the Court's digital recording system in all courtrooms; (3) continue its support of its upgraded data network and voice connections and Virtual Private Network System; (4) upgrade and support existing software applications; (5) purchase new software applications to ensure the continued operational efficiency of the Court; (6) replace computer desktop systems, including monitors, voice mail, fax, and file servers in accordance with the judiciary's cyclical replacement program; (7) purchase a replication server for the Court's COOP site; and (8) support Court equipment by continuing to purchase yearly maintenance agreements. Once again, the Court will continue to expand its developmental and educational programs for staff in the areas of job-related skills and technology.

In Fiscal Year 2010, the Court will not only remain committed to using its carryforward balances in the Judiciary Information Technology Fund to continue its information technology initiatives and to support the Court's short-term and long-term information technology needs, but it will also continue its commitment to its cyclical replacement program for equipment and ergonomic furniture for the Courthouse. This latter program not only ensures the integrity of equipment and furnishings, but also maximizes the use and functionality of the internal space of the courthouse. Additionally, as in the past, the Fiscal Year 2010 request includes funds for the support and maintenance of the Court's upgraded security systems. Lastly, the Court will continue its efforts to address the educational needs of the bar and Court staff.

I would like to again emphasize that the Court will continue to conservatively manage its financial resources through sound fiscal, procurement and personnel practices. As a matter of internal operating principles, the Court routinely has engaged in cost effective budgetary and procurement procedures in keeping with the overall administrative policies and practices of the Judicial Conference. To this end, in Fiscal Year 2008, the Court utilized the new procurement and contracting authorities granted by Congress to the Judiciary. Also, please recognize that, for over five years the Court has only requested funds to maintain current services. The continued increase in the projected rent charges has caused concerns regarding the Court's continued ability to maintain current services without additional funds to support the rent increase. In an effort to lessen the projected impact of this rent increase, the Court has continued to meet with GSA's high level regional office personnel to discuss possible options that will help alleviate the high rent increase in case funding is not made available to the Court.

Once again, I would like to personally extend my deepest thanks and appreciation to Congress for recognizing the needs of the Court by providing, in Fiscal Years 2008 and 2009, adequate funding to maintain current services. I am confident that Congress, in Fiscal Year 2010, will provide the needed funds for the increase in rent costs, thereby enabling the Court to continue to operate in a cost effective and efficient manner.

The Court's "General Statement and Information" and "Justification of Changes," which provide more detailed descriptions of each line item adjustment, were submitted previously. If the Committee requires any additional information, we will be pleased to submit it.

Mr. SERRANO. Thank you.
Mr. Duff.

DIRECTOR DUFF'S OPENING STATEMENT

Mr. DUFF. Good morning, Chairman Serrano, Representative Wasserman Schultz, Representative Emerson. I am pleased to be here this morning to present the budget request for the Administrative Office of the U.S. Courts (AO) and to support the overall budget request for the entire judicial branch.

I will also make some brief remarks and ask that my written testimony be included in the hearing record.

I join Judge Gibbons in thanking you and the committee for the support that you provided the Judiciary in the fiscal year 2009 appropriations bill. It was very much appreciated.

The AO was created by Congress in 1939 to assist the federal courts in fulfilling the mission to provide equal justice under the law. It is a unique entity in government. It doesn't operate as a headquarters for the courts, but rather, court operations are decentralized. The AO does, however, provide administrative, legal, financial, management, program, security, information technology, and other support services to all federal courts. We also support the Judicial Conference of the United States and its 25 committees. The AO has evolved over the years and matured to meet the needs of the judicial branch. Service to the courts, however, remains our basic mission.

We collaborate with the courts in many ways to improve the operation of the Federal Judiciary. A central focus of the AO continues to be the successful day-to-day management, particularly financial management and stewardship, of court resources that you supply us with. In that regard, during the past year, we had 20 court unit executives and budget managers who worked with AO staff to complete a major undertaking, and that was the delivery of a National Court Budget Management Training Program to court units across the country. Over a 3-year period, more than 1,000 court employees completed this mission-critical training. It is training to manage the local court budgets and to ensure that they keep pace with increased authorities that have been delegated to the courts.

The program emphasized practical, hands-on budget management business processes as well as legal authorities, procurement regulations, and maximizing available resources.

I want to also mention briefly our oversight and audit function. The AO plays a vital role in the oversight of the Judiciary's use of funds and conducts financial audits, program audits, reviews, assessments, and evaluations to promote effective and economical practices in the Administrative Office and in court operations.

In fiscal year 2008, the AO conducted 540 onsite court reviews; 151 court and other financial audits; and 232 debtor audits, as required by the BAPCPA, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.

The AO recently began implementing an automated internal control program to enhance courts' accountability, and this program will enhance the internal control capabilities of court unit executives by identifying potential issues before they become a problem.

The program will also assist court unit executives in protecting court funds and precluding improper disbursements by monitoring the separation of duties and reporting violations so corrective actions can be taken immediately.

COURTHOUSE CONSTRUCTION

I next want to address the status of our courthouse construction program. We very much appreciate the funding you made available to replace the Cedar Rapids Courthouse, which was destroyed this past year in the flooding in the Midwest, as well as the additional funding we received to complete the San Diego Courthouse Project, which, as you know, has been very much needed.

We also appreciate your efforts on our behalf during consideration of the stimulus bill which provides no less than \$300 million that could be used to construct U.S. courthouses and Federal buildings. In December, the Judiciary and GSA developed a list of shovel-ready courthouse projects and provided it to the Congress. We are eager to see the final project list that GSA sends to you for your approval.

With five courthouse projects that are ready to begin the construction phase—they have already completed the site and design work—I am hopeful that the full \$300 million will be allocated for the construction of courthouse projects on our 5-year plan.

The cost of the shovel-ready courthouse projects total \$1.239 billion. Unfortunately, the \$300 million in the stimulus bill will not fund all of these projects. We have, therefore, asked the Administration to include funding for the GSA in its revised 2010 budget request to support the construction of the shovel-ready projects that remain.

In testimony before the House Transportation and Infrastructure Committee, the GSA stated that more than one-half of the total expenditures for construction of a courthouse would benefit a local economy in the form of salaries for construction workers. In other words, if the full \$1.2 billion for the construction of these five courthouse projects were funded, there would be an infusion of more than \$600 million in construction-related salaries, providing an estimated 5,397 jobs in these five local communities over the next 3 years.

While providing an economic boost to the States in which they are located, these courthouse projects were requested in these localities to address serious security, public health and safety deficiencies as well as critical space shortages.

So I hope you will consider funding the new courthouse construction projects in your fiscal year 2010 appropriations bill. It will be a real boost to local economies.

Earlier this week, the Judicial Conference approved the Judiciary's 5-year Courthouse Construction Plan for Fiscal Years 2010 Through 2014, which I ask to be included in the record.

[CLERK'S NOTE.—Subsequent to the hearing, the Judiciary provided the following additional information:]

Five-Year Courthouse Project Plan for FYs 2010-2014
Approved by the Judicial Conference of the United States
March 17, 2009
 (estimated dollars in millions)

FY 2010			Cost	Score	Est. Net Annual Rent
1	Austin, TX	Add'l. S&D / C	\$116.1	82.0	\$6.5
2	Salt Lake City, UT	Add'l D / C	\$211.0	67.9	\$11.4
3	Savannah, GA	Add'l. D	\$7.9	61.3	\$3.5
4	San Antonio, TX	Add'l. D	\$4.0	61.3	\$9.2
5	Mobile, AL	Add'l. S&D / C	\$190.3	59.8	\$4.7
			\$529.3		\$35.4

FY 2011			Cost	Score	Est. Net Annual Rent
1	Nashville, TN	Add'l. S&D / C	\$183.9	67.3	\$7.0
2	Savannah, GA	C	\$95.5	61.3	\$3.5
3	San Jose, CA	Add'l. S	\$38.6	54.5	\$9.4
4	Greenbelt, MD	S&D	\$14.0	53.8	\$1.6
			\$332.0		\$21.5

FY 2012			Cost	Score	Est. Net Annual Rent
1	San Antonio, TX	C	\$142.2	61.3	\$9.2
2	Charlotte, NC	C	\$126.4	58.5	\$7.1
3	Greenville, SC	C	\$79.1	58.1	\$4.1
4	Harrisburg, PA	C	\$57.3	56.8	\$5.4
5	San Jose, CA	D	\$17.2	54.5	\$9.4
			\$422.2		\$35.2

FY 2013			Cost	Score	Est. Net Annual Rent
1	Norfolk, VA	C	\$104.7	57.4	\$5.1
2	Anniston, AL	C	\$20.4	57.1	\$1.1
3	Toledo, OH	C	\$109.3	54.4	\$5.9
4	Greenbelt, MD	C	\$170.0	53.8	\$1.6
			\$404.4		\$13.8

FY 2014			Cost	Score	Est. Net Annual Rent
1	San Jose, CA	C	\$223.9	54.5	\$9.4
			\$223.9		\$9.4

S = Site; D = Design; C = Construction; Addl. = Additional
All cost estimates subject to final verification with GSA.

ADMINISTRATIVE OFFICE'S FY 2010 BUDGET REQUEST

Last, I want to talk about, very briefly, the AO's budget request.

The fiscal year 2010 appropriations request for the Administrative Office of the U.S. Courts is \$84 million. That is an increase of \$5 million over the last year. For the third year in a row, the AO continues to operate under a no-growth current services budget.

And Representative Emerson, you mentioned this morning the difficult tasks you all will have this year. I wanted to mention to the committee that when I became Director of the AO, one of the first things I did was impose a hiring freeze to assess our services. And the only new hires I have approved since being there and lifting the initial hiring freeze have been to backfill vacancies that are most critical to our mission.

But I am pleased to report to the committee this morning that, since becoming Director, our staffing levels at the AO have been reduced below what they were 15 years ago. So we have tried to be good stewards of the funds you have provided to us.

The requested increase for the AO this year is exclusively to cover base adjustments and maintain current services. And more than half of the increase is to annualize the fiscal year 2009 pay adjustment and fund the proposed 2010 COLA for our employees. The balance is for inflationary adjustments.

Chairman Serrano and members of the subcommittee, I recognize that fiscal year 2010 is going to be a very difficult year for you and your colleagues, and we will continue to work with you to meet reasonable budget needs. And I appreciate your past support of the Administrative Office and hope you will continue to keep in mind the role the AO plays in supporting our courts.

I thank you again for the opportunity to be with you this morning.

[The information follows:]

STATEMENT OF JAMES C. DUFF, DIRECTOR
ADMINISTRATIVE OFFICE OF THE U.S. COURTS
BEFORE THE SUBCOMMITTEE ON
FINANCIAL SERVICES AND GENERAL GOVERNMENT
COMMITTEE ON APPROPRIATIONS
UNITED STATES HOUSE OF REPRESENTATIVES
March 19, 2009

Introduction

Chairman Serrano, Representative Emerson, and members of the Subcommittee, I am pleased to appear before you this morning to present the fiscal year 2010 budget request for the Administrative Office of the United States Courts (AO) and to support the overall request for the entire Judicial Branch.

First, I would like to join Judge Gibbons in thanking you and your Committee for the support you provided the Judiciary in the fiscal year 2009 appropriations bill. In addition to our funding, we deeply appreciate your willingness to include several statutory provisions that are critical to the operation of the courts.

The 111th Congress brings with it many new faces to the Subcommittee, and I look forward to working with you and your staff to meet the needs of the federal Judiciary. We recognize the very tight fiscal constraints in which you will continue to operate and appreciate being able to work closely with the Subcommittee throughout the process as our requirements change. I am available to answer any questions you might have about the needs of the federal Judiciary and the budget request we have put forward to meet those critical needs.

Role of the Administrative Office

In July 2006, I was appointed by Chief Justice Roberts to become the 7th Director of the Administrative Office of the U.S. Courts in its 70-year history. Created by Congress in 1939 to assist the federal courts in fulfilling their mission to provide equal justice under law, the AO is a unique entity in government. Neither the Executive Branch nor the Legislative Branch has any one comparable organization that provides the broad range of services and functions that the AO does for the Judicial Branch.

Unlike most Executive Branch agencies in Washington, the AO does not operate as a headquarters for the courts. The federal court system is decentralized, although the AO provides administrative, legal, financial, management, program, security, information technology and other support services to all federal courts. It also provides support and staff counsel to the policy-making body of the Judiciary, the Judicial Conference of the United States, and its 25 committees, and it helps implement Judicial Conference policies, as well as applicable federal statutes and regulations. The AO carries out a comprehensive financial audit program to ensure the Judiciary expends its resources properly. It also coordinates Judiciary-wide efforts to improve communications, information technology, program leadership, and administration of the courts, and is leading the effort to contain costs throughout the Judiciary. Our administrators,

auditors, accountants, systems engineers, personnel specialists, analysts, architects, lawyers, statisticians, and other staff provide professional services to meet the needs of judges and staff working in the federal courts nationwide. The AO staff also respond to Congressional inquiries, provide information on pending legislation, prepare Congressionally mandated reports, and respond to Government Accountability Office (GAO) requests for information on behalf of Congress, and review and comment on GAO draft reports.

Focus on Improved Support and Service to the Courts

When I first became Director of the Administrative Office, I launched a review of the organization and its mission to ensure that the structure and services provided by the AO were appropriate and cost-effective, and that they addressed the changing needs of the courts. An ad hoc advisory committee of judges, court executives, and AO senior staff examined our core mission of service to the courts as defined by statute and directives from the Judicial Conference to determine if internal adjustments could be made to improve efficiency and responsiveness.

Strategic Direction

That review resulted in an October 2007 report that provided recommendations for enhanced Administrative Office services to the courts. In addition to measures aimed at improving service delivery and the AO's working relationship with the courts, the Advisory Committee recommended a series of initiatives to increase efficiencies in AO operations. These included a closer alignment of AO functions and resources with the Judiciary's interests and priorities. During fiscal year 2008, improvement initiatives were pursued through the development of an AO strategic plan, coupled with efforts to streamline internal decision making, improve communications within the organization, and enhance inter-office coordination.

In November 2008, I approved the "Strategic Direction for the Administrative Office of the United States Courts: Fiscal Years 2009-2013." It is an agency-wide, multi-year plan that will guide the AO's activities. It embodies my vision of the AO as an organization that (1) aspires to provide the best possible service to the Judiciary and the public, (2) operates with teamwork, integrity, and transparency, and (3) continually seeks to improve its performance and enhance its partnership with the courts.

The AO has already begun to integrate the Strategic Direction into our major initiatives process – aligning each of the current fiscal year's major initiatives with our strategic goals. As we continue to use this kind of framework for making business decisions, the planning process will become even more forward-looking so that the plan becomes a roadmap to the future. Undoubtedly, it will be a key tool in helping the AO to support the Judiciary through the economic downturn and constrained budgets we could face over the next few years.

Revised Advisory Structure

Another outcome of my initial review was a restructuring of the way in which the AO receives input from the courts in the development of Judiciary policies and procedures. The AO relies upon advice and recommendations on court matters from a formal advisory process consisting of court representatives. A focus group of court and AO personnel was created to review how the AO receives input from the courts. Based on the group's recommendations, I made modifications to the advisory structure, designed to promote a greater AO and court partnership. The revised advisory structure will also facilitate seeking advice from the courts at early and significant stages of policy development, which should result in the development of policies and procedures more responsive to court needs.

Leadership Exchange Program

In January, we announced the implementation of a court/AO exchange program to promote mutual understanding of the operations of the Administrative Office and the courts through the temporary exchange of staff. The Leadership Program will bring senior and mid-level court staff, including federal defender organization staff, to the AO for assignments to do substantive work on national initiatives and high-priority projects. An Information Technology (IT) exchange already has been initiated with the selection of three individuals from the courts who are working on a replacement for the current web site that enables court managers and IT professionals to post and download locally-developed applications, an information systems architecture documentation project for the Judiciary, and an assessment of IT staff skills.

AO Collaboration with the Courts

The AO collaborates with the courts in many different ways to improve the operation of the federal Judiciary. A central focus of the AO continues to be the successful day-to-day financial management and stewardship of court resources.

Financial Training

During the past year, twenty court unit executives and budget managers worked with AO staff to complete a major milestone: the delivery of the National Court Budget Management Training Program to court units across the country. Over a three-year period, more than 1,000 court employees completed this mission-critical training, developed to ensure that training to manage local court budgets kept pace with increased authorities delegated to the court. The program emphasized practical, hands-on budget management business processes, as well as legal authorities, procurement regulations, and maximizing available resources.

Internal Oversight, Audit, and Review

The Administrative Office also plays a vital role in the Judiciary's system of oversight and conducts financial audits, program audits, reviews, assessments, and evaluations to promote effective and economical practices in AO and court operations.

Financial audits cover all court units, Judiciary funds, and financial systems. Regular cyclical court audits are conducted on a four-year cycle for most courts, and on a 30-month cycle for larger courts. Courts are also audited after a change in clerk. Other audits cover the Judiciary's appropriations, major financial systems, retirement programs, registry funds, bankruptcy trustees and debtors, defender grants, and various court and Judiciary operations.

Management reviews are a cooperative effort between the AO and the courts to provide an objective evaluation of court operations. The AO coordinates on-site court management assistance and program reviews at the request of chief judges and court managers. In FY 2008, AO staff conducted 54 on-site court reviews, 151 court and other financial audits, and 232 debtor audits as required by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.

I am pleased to report that the AO has recently begun implementing an automated internal control program to enhance courts accountability. The program provides custom developed financial data mining reports that will enhance the internal control capabilities of court unit executives, assisting them in identifying potential issues before they become a problem, such as meeting existing procurement regulations, financial management requirements, or travel regulations. The program will also assist court unit executives in protecting court funds and precluding improper disbursements by monitoring separation of duties and reporting violations so corrective action can be taken immediately. Once fully implemented, which we expect to occur over the next two years, the program will become an essential management tool for each individual court unit, enabling them to identify potential problem areas easily and make corrections in a timely manner.

Reducing Rent Costs and Improving Planning

The Judiciary's Circuit-Level Rent Budget (CRB) program is another example of a successful collaboration between court staff, AO staff, and judges. The program implements change in practice that combines fiscal discipline in the management of rent with decentralized decision making.

The CRB program is an important cost-containment initiative, approved by the Judicial Conference in September 2007, that established rent budget caps for individual circuit Judicial councils. The program has already helped the Judiciary contain rent growth in fiscal year 2008 to 1.6 percent above fiscal year 2007 expenditures, comfortably within the annual 4.9 percent cap established by the Judicial Conference in 2006. With all circuit judicial councils now working within the CRB framework, the effort has clearly increased awareness in the circuits

and the courts of the relationship between space needs and rent costs, and the large impact rent payments to the General Services Administration have on the Judiciary's overall budget.

J-Rent – Monitoring Space Costs

During the past year, we continued to work closely with the Northern District of New York on a national approach to improve the reliability of courthouse rent calculations from the General Services Administration. *J-Rent*, a software module developed by the AO's Office of Facilities and Security, in collaboration with the U.S. District Court for the Northern District of New York, provides court unit executives with a simple, searchable database of past and current rent-bill information. As rent cost-containment efforts have progressed over the past several years, it became apparent that the courts needed to have a way to verify and track their rent expenditures. *J-Rent* is an invaluable tool for rent verification and will greatly assist court executives as they make decisions regarding their space utilization.

Emergency Response

The Administrative Office and the courts also have developed an outstanding record of coordinated responses to emergency events. Lessons learned in recent years better prepared the AO to help courts plan for and cope with the impact of the 2008 hurricanes and Midwest flooding. For instance, because of remarkable efforts in the Northern District of Iowa, Cedar Rapids Division, after the most devastating flood in 500 years, the federal court relocated and reopened for business in only eight working days.

With continued heavy rain in the forecast and the National Weather Service predicting a record-setting crest of the Cedar River, on Wednesday, June 11, 2008, the Clerk of Court implemented their Continuity of Operations Plan (COOP) and instructed court staff to stay home. The U.S. Bankruptcy Court located just a few blocks away, also implemented its COOP. The district court's website and its Case Management/Electronic Case Filing System (CM/ECF) were transferred to a national server, and the court's own CM/ECF server was sent to the Sioux City courthouse (350 miles northwest) for safety. Websites for both the district and the bankruptcy courts announced the temporary closure of their respective courts while reassuring attorneys that throughout the COOP period of closure, the court's electronic CM/ECF would remain available for electronic filing and research.

All court facilities in Cedar Rapids suffered significant water damage. Yet, several days after the river had receded, court staff entered the courthouse and were able to remove usable equipment from the second and third floors. The General Services Administration (GSA) initially estimated the courthouse might be closed for at least six months. But by June 16, 2008, just two working days after implementing their COOP, the district court announced that they were back in business at a new location. Temporary space was located for the district and bankruptcy courts about five miles away. Folding tables and chairs were set up until leased furniture could be delivered. Temporary courtrooms were outfitted in conference space. Staff from the AO were on-site to assist with relocation arrangements. The Judiciary Emergency

Response Team, comprised of 22 program offices at the AO, assisted the court with emergency procurement authority, took the first steps to supply secure Data Communication Network lines to the new location, and worked with the U.S. Marshals Service to provide security to the new facilities. On June 17, 2008, Cedar Rapids court employees were asked to report for work at the new facility.

The Probation and Pretrial Services Office also took emergency steps to ensure the continuity of operations and the community's safety. Before evacuating the downtown courthouse, probation and pretrial officers were asked to review which residences for released offenders would be affected by the flooding. Officers had access to the Probation/Pretrial Services Automated Case Tracking System and phone contact was made with every offender.

Courts from around the country also pitched in. The district court in New Orleans sent an email with 20 administrative orders developed after Katrina to deal with things like the Speedy Trials and motions for continuance. Sample orders are also located on the Judiciary's Emergency Preparedness intranet website. The court had offers from volunteers around the country to help remotely with electronic docketing. The Southern District of Iowa sent IT staff to assist, and an architect who is assisting the District of Minnesota with their renovation project came to help plan renovations to the temporary facilities.

The Cedar Rapids courthouse itself remains closed. The court will continue to function in its temporary location until the new Cedar Rapids Courthouse construction project is completed. The Judiciary, and the district court, sincerely appreciates your funding this Judicial space emergency in the 2008 Disaster Supplemental.

Mr. Chairman, in spite of this emergency situation in June 2008, the Northern District of Iowa – with half of the district working over three months of the 2008 statistical year in its current warehouse situation – was number one in the nation in trials completed, number one in median times from filing to disposition in criminal cases, and fifth in civil cases. The district is also assisting the AO with national COOP training and resource development. I think this speaks to the dedication and commitment of court staff – that even courts that have been negatively impacted do what it takes to perform at the highest level.

AO Collaboration with the Executive Branch

Not only does the AO work in close collaboration with court staff throughout the country, but this partnership often includes Executive Branch agencies. Earlier, Judge Gibbons highlighted our efforts to ensure that the federal government had a coordinated response to the changes in crack cocaine sentencing policy. The AO and the courts also work closely with Executive Branch agencies to address resource issues of mutual concern.

Pre-Trial Remote Detention

The high volume of federal prosecutions has placed an increasing strain on the infrastructure of the criminal justice system. In some Judicial districts, its impact is evident in the housing and transportation of pretrial detainees where lack of bed space requires detainees to be housed at great distances from where they were arrested. Many districts have expressed concern that lawyers, probation officers, and family members are required to travel excessive distances to meet with or visit with detainees. Not only does this strain agency budgets, but it could disrupt the integrity of the Judicial process.

In an effort to address these issues, a group of judges from multiple Judicial Conference Committees, and representatives from the AO, the Office of the Federal Detention Trustee, Federal Public Defenders, U.S. Marshals Service, Pretrial and Probation Services, Federal Bureau of Prisons, and the Executive Office of U.S. Attorneys have formed an ad hoc study group on detention and have been meeting since July.

The group has surveyed all Judicial districts, analyzed and ranked each Judicial division (as opposed to overall district) based on a set of factors identified by the group to determine the severity of the pre-trial detention problem in that location. A website is now under development to allow districts to see the results of the survey. The website also will include suggested long and short-term remedies for jurisdictions that have been developed by this group of Executive and Judicial Branch representatives. This is an example of the impact of inter-branch coordination and the significant progress that can be made in addressing issues of mutual concern. I am hopeful the recommendations of the group will provide relief to districts that are struggling with the problem of pre-trial remote detention, as well as set the stage for additional collaboration in the future.

The AO and individual courts have also been working closely with Executive Branch agencies to develop better business practices. Let me highlight a few.

Department of Justice's Victim Notification System (VNS)

In September 2008, the Judicial Conference approved a Memorandum of Understanding with the Department of Justice (DOJ) to develop an interface between the federal Judiciary's Case Management/Electronic Case Files (CM/ECF) system and DOJ's Victim Notification System. Each night, court event information – notices of hearings, sentences, etc. – can be extracted from the CM/ECF system and electronically passed to the VNS. More than thirty district courts are transmitting data to the VNS. That number is expected to double by the end of April 2009.

As you know, over the past decade, Congress has enacted several pieces of legislation addressing the needs of crime victims, including most recently the Crime Victims' Rights Act of 2004. The Department of Justice must notify victims of significant stages and procedural developments in the criminal justice process. DOJ must also keep victims aware of the status of

an investigation of a crime, including subsequent prosecution, trial, incarceration, and location and custody status of the offender. The VNS was designed to do that by automated letter, email, or a toll-free telephone call center.

Prior to this initiative, data on court events was maintained by the Judiciary and had to be sent to the DOJ, where it was manually entered into a database at individual U.S. attorney offices and then transferred to the VNS. The interface with CM/ECF will allow the data to be converted without re-entering thereby helping to eliminate data entry errors. In addition, federal probation officers will have access to the database and the notification capabilities of the VNS, which will save considerable time when they are looking for victim information to prepare victim-impact statements for pre-sentence reports.

These examples of public servants working together to share information and to refine and enhance an operation that can serve multiple purposes is heartening. This is exactly the type of inter-branch collaboration we need to see more often, particularly during times of limited resources.

CVB and the U.S. Forest Service

In FY 2006, language was included in the Judiciary's Appropriations Bill authorizing the collection of a \$25 processing fee for all fines assessed on federal property. The processing fee offsets the operating costs of the Judiciary's Central Violations Bureau (CVB) which is mandated to collect and process these fines. Since implementation of the processing fee, the CVB has teamed with the U.S. Forest Service for a pilot project that has equipped a small group of officers with laptops and printers for use in their vehicles.

Instead of issuing a handwritten violation notice, those officers issue an electronic ticket and, when they reach headquarters, transfer the information to a central Forest Service database. The information is then transmitted to the CVB weekly. This saves time for both the Forest Service and the CVB data-entry staff. The E-ticket not only speeds up the time it takes a ticket to reach the CVB, it provides more accurate results. The fines collected are deposited into the Treasury and transferred into the Crime Victims Fund maintained by the Department of Justice.

Courthouse Construction

I wanted to discuss, again this year, the status of our courthouse construction needs. First, let me express my sincere appreciation for the funding you have made available to the Judiciary in FY 2009. As part of the 2008 Emergency Supplemental, you included \$182 million in disaster funding to replace the Cedar Rapids, Iowa Courthouse. In the FY 2009 Omnibus Appropriations Bill, you provided \$110 million in funding so that the San Diego Courthouse project could begin construction, and \$165 million for significant repair and alteration projects at two existing courthouses. In addition, the American Recovery and Reinvestment Act – or Stimulus bill as it

is often called – provides no less than \$300 million that could be used to construct United States courthouses and federal buildings.

With regard to the \$300 million in the Stimulus, we have been working closely with the General Services Administration on a list of “shovel-ready” courthouse projects and are eager to see the project list that it sends forward to the Committee for approval. With five courthouse projects ready to begin the construction phase – having already completed site and design work – I am hopeful the full \$300 million will be allocated for the construction of courthouse projects on our Five-Year Plan. Unfortunately, the cost of the “shovel-ready” courthouse projects total \$1.239 billion, including the Los Angeles project, which I will discuss further in a moment. Thus, the \$300 million in the Stimulus will not fund all of these projects. We have, therefore, asked the Administration to include funding for the GSA in its revised 2010 Budget Request to support the construction of the “shovel-ready” projects that remain.

In testimony before the House Transportation and Infrastructure Committee, GSA stated that more than one-half of the total expenditures for construction of a courthouse would benefit a local economy in the form of salaries for construction-industry workers. In other words, with an appropriation of \$1.239 billion for the construction of these five courthouse projects, there would be an infusion of more than \$600 million in construction-related salaries, providing an estimated 5,397 jobs in these five local communities over three years. This calculation of jobs does not factor in what economists call the “multiplier effect” of those construction salaries – from purchasing groceries, paying rent and mortgages, making car payments, to generating tax revenue for state and local governments. Further, many of these projects are located in cities where other construction projects have been abandoned as a result of the recent economic downturn.

In addition to providing an economic boost to the states in which they are located, these courthouse projects were requested in these localities to address serious security, public health, and safety deficiencies, as well as critical space shortages. The existing courthouses at most of these locations were constructed at either the turn of the last century or in the 1930s as part of the Works Progress Administration – the economic stimulus effort during the Great Depression. They lack the modern security features so critical in today’s busy courthouses, such as secure sally ports for unloading prisoners at the courthouse; separate circulation patterns that ensure prisoners, the public, and judges only meet in the courtroom; and adequate holding cells.

Mr. Chairman, I respectfully request your consideration of funding new courthouse construction projects in your fiscal year 2010 Appropriations Bill. Earlier this week, the Judicial Conference approved the Judiciary’s Five-Year Courthouse Project Plan for Fiscal Years 2010-2014, which I ask be included in the hearing record.

In addition, the courthouse problem in Los Angeles, California still has not been resolved. The Central District of California is the largest Judicial district in the country and current facilities are seriously inadequate. Because of market conditions and delays, the cost of the Los Angeles project far exceeds GSA’s original estimates. Despite the sizable reductions in

scope made by the court, the cost of this project exceeds available appropriations but will only get more expensive as time passes. The AO, the court, and GSA have been working together to find a solution and were hopeful that the additional funds could be provided through the Reinvestment Act. While this, unfortunately, did not happen, I hope we can continue to work with you to find a solution to this critical space emergency.

Administrative Office Fiscal Year 2010 Budget Request

Last, I will address the fiscal year 2010 appropriations request for the Administrative Office of the U.S. Courts, which is \$83,963,000. This represents an increase of \$4,914,000 or 6 percent, over fiscal year 2009 enacted appropriations. For the third year in a row, the Administrative Office continues to operate under a no-growth current-services budget. The only new hires I have approved, since lifting my initial hiring freeze, have been to backfill vacancies that are most critical to our mission. In fact, since becoming Director, staffing levels at the AO have been reduced below what they were fifteen years ago.

The AO's appropriation comprises less than two percent of the Judiciary's total budget, yet the work performed by the AO is critical to the effective operation of the U.S. courts. In addition to the appropriation provided by this Committee, as approved by the Judicial Conference and the Congress, the AO receives funds from other sources such as fee collections and carryover balances to offset appropriation requirements. The AO also receives reimbursements from other Judiciary accounts for information technology development and support services that are in direct support of the courts, the court security program, and defender services.

The requested increase of \$4.9 million is exclusively to cover base adjustments to maintain current services; the AO requests no program increases. More than half of the increase is to fund the proposed fiscal year 2010 pay adjustment and to annualize the fiscal year 2009 pay adjustment. The balance is for inflationary adjustments. In fiscal year 2009, the Judiciary expects to have sufficient fee and carry-over balances available to the AO to offset partially direct appropriations required to maintain current services. If we have overestimated non-appropriated funds available to this account, we may be forced to reduce current on-board staffing. This would adversely affect our ability to carry out the AO's statutory responsibilities and serve the courts. Similarly, if fee collections and carryover surpass our estimates, the amount of appropriations we are requesting could be reduced further. We will, of course, keep you apprised of our actual estimates of non-appropriated funds throughout the year.

Conclusion

Chairman Serrano, Representative Emerson, members of the Subcommittee, I have shared with you only a few examples of the diverse issues we handle and the types of services and support the Administrative Office provides the federal Judiciary. In addition to striving to

perform its fundamental responsibilities in the most efficient and effective manner, the AO must look beyond the immediate day-to-day needs of the courts. It is our responsibility to anticipate and plan for changes in workload, workforce demographics, legislative mandates, resource limitations, and other trends and events so that we can serve the courts effectively in the years to come.

In addition to our service to the courts, the AO works closely with the Congress, in particular, the Appropriations Committee and its staff, to provide accurate and responsive information about the federal Judiciary. I fully recognize that fiscal year 2010 will be a difficult year for you and your colleagues as you struggle to meet the funding needs of the agencies and programs under your purview. I urge you, however, to consider the significant role the AO plays in supporting the courts and the mission of the Judiciary. Our budget request is one that does not seek new resources for additional staff or programs. I hope you will support it.

Thank you again for the opportunity to be here today. I would be pleased to answer your questions.

James C. Duff, Director
Administrative Office of the U.S. Courts
House Statement Outline
March 19, 2009

- Good morning. I am pleased to appear before you this morning to present the budget request for the Administrative Office of the United States Courts (AO) and to support the overall request for the entire Judicial Branch.
- I will make some brief remarks and ask that my written testimony be included in the hearing record.
- I join Judge Gibbons in thanking you and your Committee for the support you provided the Judiciary in the fiscal year 2009 appropriations bill.

Role of the AO

- The AO was created by Congress in 1939 to assist the federal courts in fulfilling the mission to provide equal justice under law. It is a unique entity in government.
- The AO does not operate as a headquarters for the courts. Court operations are decentralized, although the AO provides administrative, legal, financial, management, program, security, information technology and other support services to all federal courts.
- The AO also provides support and staff counsel to the Judicial Conference of the United States, and its 25 Committees, and it helps implement Judicial Conference policies, as well as applicable federal statutes and regulations.
- The AO has evolved and matured over the years to meet the changing needs of the Judicial Branch. Service to the courts, however, has been and remains our basic mission.

AO Collaboration with the Courts

- The AO collaborates with the courts in many different ways to improve the operation of the federal Judiciary. A central focus of the AO continues to be the successful day-to-day financial management and stewardship of court resources.

Financial Training

- During the past year, twenty court unit executives and budget managers worked with AO staff to complete a major milestone: the delivery of the National Court Budget Management Training Program to court units across the country.
- Over a three-year period, more than 1,000 court employees completed this mission-critical training, developed to ensure that training to manage local court budgets kept pace with increased authorities delegated to the court. The program emphasized practical, hands-on budget management business processes, as well as legal authorities, procurement regulations, and maximizing available resources.

Internal Oversight, Audit, and Review

- The AO also plays a vital role in the Judiciary's system of oversight and conducts financial audits, program audits, reviews, assessments, and evaluations to promote effective and economical practices in AO and court operations.
- In FY 2008, the AO conducted 54 on-site court reviews, 151 court and other financial audits, and 232 debtor audits as required by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.
- The AO recently began implementing an automated internal control program to enhance courts accountability. The program will enhance the internal control capabilities of court unit executives by identifying potential issues before they become a problem, such as meeting existing procurement regulations, financial management requirements, or travel regulations.

- The program will also assist court unit executives in protecting court funds and precluding improper disbursements by monitoring separation of duties and reporting violations so corrective action can be taken immediately.

Courthouse Construction

- I wanted to discuss, again this year, the status of our courthouse construction needs. We appreciate the funding you made available to replace the Cedar Rapids Courthouse which was destroyed in the mid-west flooding, as well as the additional funding your provided to complete the San Diego project.
- We also appreciate your efforts on our behalf during consideration of the Stimulus bill which provides no less than \$300 million that could be used to construct United States courthouses and federal buildings.
- In December, the Judiciary and the GSA developed a list of "shovel-ready" courthouse projects and provided it to the Congress. We are eager to see the final project list that GSA sends forward to the Committee for approval. With five courthouse projects ready to begin the construction phase – having already completed site and design work – I am hopeful the full \$300 million will be allocated for the construction of courthouse projects on our Five-Year Plan.
- Unfortunately, the cost of the "shovel-ready" courthouse projects total \$1.239 billion and the \$300 million in the Stimulus will not fund all of these projects. We have, therefore, asked the Administration to include funding for the GSA in its revised 2010 Budget Request to support the construction of the "shovel-ready" projects that remain.
- In testimony before the House Transportation and Infrastructure Committee, GSA stated that more than one-half of the total expenditures for construction of a courthouse would benefit a local economy in the form of salaries for construction-industry workers.

- In other words, with an appropriation of \$1.239 billion for the construction of these five courthouse projects, there would be an infusion of more than \$600 million in construction-related salaries, providing an estimated 5,397 jobs in these five local communities over three years.
- While providing an economic boost to the states in which they are located, these courthouse projects were requested in these localities to address serious security, public health, and safety deficiencies, as well as critical space shortages.
- I hope you will consider funding new courthouse construction projects in your fiscal year 2010 Appropriations Bill. Earlier this week, the Judicial Conference approved the Judiciary's Five-Year Courthouse Project Plan for Fiscal Years 2010-2014, which I ask be included in the hearing record.

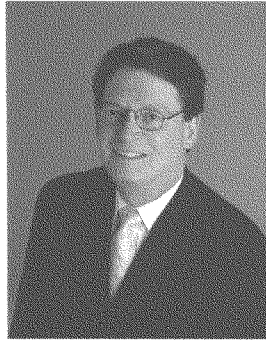
AO Budget Request

- The FY 2010 appropriations request for the Administrative Office of the U.S. Courts, is \$84 million – an increase of \$5 million or 6 percent. For the third year in a row, the AO continues to operate under a **no-growth current services budget**. The only new hires I have approved, since lifting my initial hiring freeze, have been to backfill vacancies that are most critical to our mission. **In fact, since becoming Director, staffing levels at the AO have been reduced below what they were fifteen years ago.**
- The requested increase for the AO is exclusively to cover base adjustments to maintain current services. More than half of the increase is to annualize the FY 2009 pay adjustment and fund the proposed FY 2010 COLA for our employees. The balance is for inflationary adjustments.

Conclusion

- Chairman Serrano, Representative Emerson, and members of the Subcommittee, I recognize that FY 2010 is likely to be a particularly difficult year for you and your colleagues as you struggle to meet the funding needs of the agencies and programs under your purview.

- I appreciate your past support of the Administrative Office and hope you will continue to keep in mind the significant role the AO plays in supporting the courts and the mission of the Judiciary. Our budget request does not seek new resources for additional staff or programs.
- Thank you again for the opportunity to be here today. I would be pleased to answer any questions you have.

**JAMES C. DUFF****DIRECTOR**

**ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS
ONE COLUMBUS CIRCLE NE
WASHINGTON, DC 20544**

James C. Duff was appointed Director of the Administrative Office of the United States Courts on July 1, 2006, by the Chief Justice of the United States, John G. Roberts, Jr.

Mr. Duff is an ex officio member of the Executive Committee of the Judicial Conference of the United States. He is Secretary to the Judicial Conference of the United States and as such provides staff support to all Conference committees. He serves on the Board of Directors of the Federal Judicial Center, is chair of the Supreme Court Fellows Commission, and is a board member of the Supreme Court Historical Society. He has been an adjunct faculty member (Constitutional Law) at Georgetown University for eight years; served as counsel and secretary to The Freedom Forum, Inc., The Newseum, Inc., the First Amendment Center, Inc., and the Diversity Institute, Inc.; was legislative counsel to the Federal Judges Association; and served on the Lawyers Committee of the National Center for State Courts.

Prior to his appointment as Director of the Administrative Office, Mr. Duff was managing partner of the Washington office of the international law firm of Baker, Donelson, Bearman, Caldwell & Berkowitz. From 1996 to 2000, he served as Administrative Assistant to Chief Justice William H. Rehnquist and was his liaison with Congress, the executive branch, and various state and federal organizations involved in the administration of justice. He also assisted the Chief Justice in his role as presiding officer of the presidential impeachment trial, as chair of the Judicial Conference, as chair of the Federal Judicial Center Board, and as Chancellor of the Smithsonian Institution.

Earlier in his career, Mr. Duff was a partner at Clifford & Wamke where he worked for twelve years until the firm merged in part with Howrey & Simon where he was a partner for five years. He also worked in Chief Justice Warren E. Burger's chambers for four years while attending Georgetown Law Center. He is a member of the D. C. Bar and has practiced law for twenty-five years.

Mr. Duff earned his B.A. degree (*magna cum laude*), Phi Beta Kappa, High Distinction in Honors Program, at the University of Kentucky in 1975 and his J.D. degree at Georgetown University Law Center in Washington, D.C. in 1981. He also attended the University of Edinburgh, Scotland.

Mr. Duff is married to Kathleen Gallagher-Duff, a lawyer at Covington & Burling, and they have three children.

THE THIRD BRANCH

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2008 Year-End Report on the Federal Judiciary

This past November, the Smithsonian Institution completed an acclaimed renovation of its National Museum of American History, which houses many of our Nation's most treasured historical artifacts. The highlight for many visitors is the Star-Spangled Banner Gallery, which provides a permanent home for the garrison flag that flew over Fort McHenry on the morning of September 14, 1814. The appearance of the flag at dawn marked the success of American soldiers in repulsing a British attack during the War of 1812 and inspired Francis Scott Key to compose the song that has become our national anthem.

The Smithsonian Institution has painstakingly preserved this fragile flag. It lies solemnly unfurled behind a glass wall in a darkened conservation chamber. The flag bears scars from the pitched battle, but it also shows blemishes, regrettably, from later neglect. The stripes are frayed, the canton is worn, and one of its fifteen stars has gone missing. Souvenir collectors during the nineteenth century snipped away fabric from its edges. This tattered flag nevertheless inspires deep reverence. Why? Because it speaks eloquently to the sacrifices of every American who has contributed to the preservation of the United States.

Our country wisely preserves and maintains its national symbols. As citizens, we should strive with no less determination and vigor to preserve and maintain

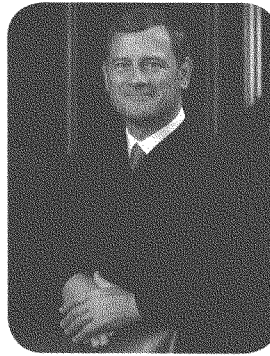
what our flag signifies and our anthem celebrates. The Constitution that secures the freedoms we hold dear endures not only because it enables self-government, but also because individuals come forward to participate in the function of governing, through voting and jury duty, through military and civilian service, and through

elected and appointed office. A great government depends on all its citizens to contribute their talents and ideals in response to their Nation's call.

The Judiciary depends on such people, who have made American courts the envy of the world and the model for new democracies. As I have previously pointed out, however, widespread esteem is no reason for complacency. In last year's report, I identified my goals of strengthening the Judiciary by promoting greater inter-Branch cooperation, maintaining high standards of judicial conduct, and restoring fair compensation for federal judges. This year, as the

Nation faces severe economic strains, I would like to note briefly what the dedicated men and women in the Judiciary are doing to control the costs of administering justice.

The Judiciary, including the Supreme Court, other federal courts, the Administrative Office of the United States Courts, and the Federal Judicial Center, received a total appropriation in fiscal year 2008 of \$6.2 billion. That represents a mere two-tenths of 1 percent of the



Chief Justice John G. Roberts, Jr.

See Year-end Report next page

Year-end Report continued from page 1

United States' total \$3 trillion budget. Two-tenths of 1 percent! That is all we ask for one of the three branches of government—the one charged “to guard the Constitution and the rights of individuals.” Alexander Hamilton, *Federalist No. 78*.

Despite the miniscule amount the Judiciary adds to the cost of government, the courts have undertaken rigorous cost containment efforts, a process begun four years ago, long before the current economic crisis. In September 2004, the Judicial Conference—the judges who set policy for the Judiciary—endorsed a cost-containment strategy that called for examining more than fifty discrete operations for potential cost savings. My predecessor, Chief Justice William H. Rehnquist, was well known for insisting that the courts operate efficiently. The Judiciary nevertheless has found new ways to achieve significant savings in three general areas: rent, personnel, and information technology.

The Judiciary has initiated a program to contain rent costs, which accounted for about 19 percent of our 2004 budget. We first identified and eliminated rental overcharges through an extensive audit of rent expenditures. We then adopted growth caps, which will result in space limitations for judicial personnel—including judges—and deferring new construction. Those efforts have produced significant savings. In 2004, the Judiciary estimated that it would devote \$1.2 billion of its 2009 budget to rent. The Judiciary now estimates its rent requirement will be \$1.0 billion, a 17 percent reduction.

We have also examined ways to control the growth of personnel costs, which accounted for 57 percent of the Judiciary's 2004 budget. The majority of the Judiciary's personnel budget—nearly

“Despite the miniscule amount the Judiciary adds to the cost of government, the courts have undertaken rigorous cost containment efforts, a process begun four years ago, long before the current economic crisis.”

90 percent—is for support staff, including clerks, secretaries, and administrative personnel. The Judiciary has revised the way it sets salaries for court employees to ensure that compensation is not out of line with employee responsibilities, job skills, and performance. The courts are continuously looking for other ways to do more with less. For example, judges now employ not more than one career law clerk to assist them with legal research and associated duties, where in the past many judges employed two or even more. Judges instead are making greater use of less experienced “term” law clerks who can provide useful service for one or two years at a lower cost. As additional measures, the Administrative Office and the Federal Judicial Center instituted self-imposed hiring freezes, trimmed budget requests, and voluntarily declined to fill vacant positions to reduce expenses. In aggregate, those measures should save as much as \$300 million from 2009 through 2017.

The Judiciary is steeped in history, but not tied to the past: We have increased efficiency through the use of information technology, which accounted for 5 percent of the Judiciary's 2004 budget. The courts now routinely use computers to maintain court dockets, manage finances, and administer employee compensation and benefits programs. The Judiciary has achieved significant savings through more cost-effective approaches in deploying those systems. For example, the courts have found that they can employ new technology in tandem with improvements in their national data communications network to consolidate local servers and other information technology infrastructure. The Judiciary's consolidation of its jury management program resulted in a savings of \$2.0 million in the first year and an expected annual savings of \$4.8 million through 2012. A similar consolidation of the probation case management system is projected to save \$2.6 million over the same period. The Judiciary is currently undertaking a consolidation of technology in its national accounting system, which is expected to achieve savings and cost avoidances totaling \$55.4 million through 2012. Those at the Office of Management and Budget or the Congressional Budget Office may not be impressed by these numbers, but don't forget: The entire Judicial Branch accounts for only 0.2 percent of the Nation's budget. For us, these are real savings.

The Supreme Court itself has worked hard to contain costs, holding back on requests for new funding until absolutely necessary. For 2009, the Court submitted a budget that called for *no new spending* and requested only the standard, government-wide inflationary adjustments to its budget. The Court's personnel have kept an eagle eye on expenditures for

an ongoing building renovation—the first since the building was completed in 1935—to update and repair antiquated systems and improve security. That renovation, now expected to be completed in 2010, has fallen behind schedule. That apparently is not unusual in Washington. But this project remains on budget despite those setbacks—a welcome departure from the Washington norm.

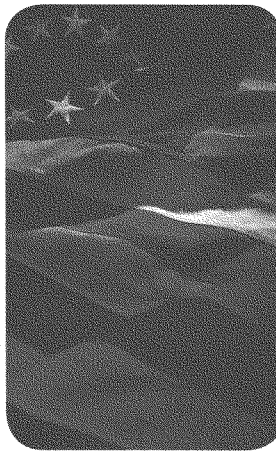
As all these efforts illustrate, the Judiciary is committed to spending its tiny share of the federal budget responsibly and will continue to make sacrifices to contain the costs of administering justice. We have worked amicably with our appropriators in Congress to achieve these results. But the courts cannot preserve their vitality simply by following a non-fat regimen. The Judiciary must also continue to attract judges who are the best of the best.

During these times, when the Nation faces pressing economic problems, resulting in business failures, home foreclosures, and bankruptcy, and when Congress is called upon to enact novel legislation to address those challenges, the courts are a source of strength. They guarantee that those who seek justice have access to a fair forum where all enter as equals and disputes are resolved impartially under the rule of law.

The courts decide issues of momentous importance to the litigants and to a broader community of persons affected by the outcomes of precedent-setting decisions. The legal issues in today's global, technology-driven economy are increasingly complex, and judges must respond with wisdom and skill acquired from study, reflection, and experience. If the Nation wants to preserve the quality of American justice, the government must attract and retain the finest legal minds, including accomplished lawyers who are

already in high demand, to join the bench as a lifelong calling.

I suspect many are tired of hearing it, and I know I am tired of saying it, but I must make this plea again—Congress must provide judicial compensation that keeps pace with inflation. Judges knew what the pay was when they answered the call of public service. But they did not know that Congress would steadily erode that pay in real terms by repeatedly failing over



the years to provide even cost-of-living increases. Last year, Congress fell just short of enacting legislation, reported out of both House and Senate Committees on the Judiciary, that would have restored cost-of-living salary adjustments that judges have been denied in past years. One year later, Congress has still failed to complete action on that crucial remedial legislation, despite strong bipartisan support and an aggregate cost that is miniscule in relation to the national budget and the importance of the Judiciary's role. To make a bad situation worse, Congress

failed, once again, to provide federal judges an annual cost-of-living increase this year, even though it provided one to every other federal employee, including every Member of Congress. Congress's inaction this year vividly illustrates why judges' salaries have declined in real terms over the past twenty years.

Our Judiciary remains strong, even in the face of Congress's inaction, because of the willingness of those in public service to make sacrifices for the greater good. The Judiciary is resilient and can weather the occasional neglect that is often the fate of those who quietly do their work. But the Judiciary's needs cannot be postponed indefinitely without damaging its fabric. Given the Judiciary's small cost, and its absolutely critical role in protecting the Constitution and rights we enjoy, I must renew the Judiciary's modest petition: Simply provide cost-of-living increases that have been unfairly denied! We have done our part—it is long past time for Congress to do its.

I am privileged and honored to be in a position to thank the judges and court staff throughout the land for their continued hard work and dedication. When our Nation's flag is proudly raised above courthouse plazas across the country each morning, these men and women once again take up the responsibility of preserving the rule of law. They can claim common cause with others in civilian and military service who, like the patriots at Fort McHenry, are guardians of liberty.

Best wishes for the New Year.
Chief Justice John G. Roberts, Jr.

APPENDIX

Workload of the Courts

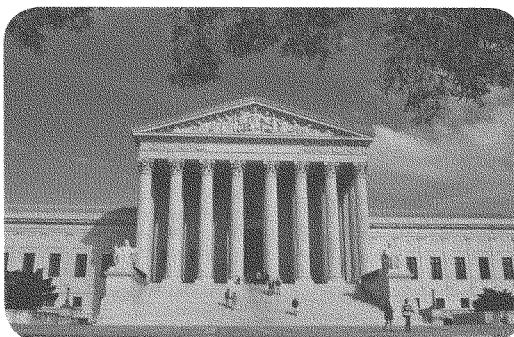
The Supreme Court of the United States

The total number of cases filed in the Supreme Court decreased from 8,857 filings in the 2006 Term to 8,241 filings in the 2007 Term—a decrease of 7 percent. The number of cases filed in the Court's *in forma pauperis* docket decreased from 7,132 filings in the 2006 Term to 6,627 filings in the 2007 Term—also a 7 percent decrease. The number of cases filed in the Court's paid docket decreased from 1,723 filings in the 2006 Term to 1,614 filings in the 2007 Term—a 6 percent decrease. During the 2007 Term, 75 cases were argued and 72 were disposed of in 67 signed opinions, compared to 78 cases argued and 74 disposed of in 67 signed opinions in the 2006 Term. No cases from the 2007 Term were scheduled for reargument in the 2008 Term.

The Federal Courts of Appeals

The number of appeals filed in the regional courts of appeals in fiscal year 2008 rose by 5 percent to 61,104 filings. All categories of appeals increased except bankruptcy appeals. After declining for two consecutive years, administrative agency appeals grew by 12 percent to 11,583 filings, primarily because challenges to the Board of Immigration Appeals decisions climbed by 13 percent to 10,280 petitions for review.

Criminal appeals rose by 4 percent to 13,667 filings. That increase stems from sentencing appeals in non-marijuana drug cases. On November 1, 2007, the United States Sentencing Commission issued an amendment to its sentencing guidelines that reduced



the penalties for most crack cocaine offenses and prompted numerous appeals. Civil appeals also increased by 4 percent to 31,454 filings. Prisoner petitions rose by 9 percent to 16,853 filings. Overall, non-prisoner civil appeals dropped by 1 percent to 14,601 filings. Both state and federal appeals in that category declined. Bankruptcy appeals fell by 9 percent to 773 filings. The number of original proceedings in the appeals courts decreased by 4 percent to 3,627 filings.

The Federal District Courts

Civil filings in the U.S. district courts increased by 4 percent, rising from 257,507 cases to 267,257 cases. Diversity of citizenship filings grew by 22 percent. Excluding the diversity filings, the number of civil cases decreased by 3 percent during fiscal year 2008. That decline reflects a reduction in federal question cases involving personal injury, as well as cases involving labor laws, protected property rights, and contracts.

The rise in diversity of citizenship filings, reflecting an increase of 15,838 cases, resulted primarily from the near doubling of personal injury cases related to asbestos and diet drugs in the Eastern District of Pennsylvania.

Federal question case filings dropped by 3 percent to 134,582 cases. Personal injury filings declined by 46 percent (down by more than 5,200 cases) primarily as a result of large decreases in filings in the Southern District of New York and the Northern District of Alabama. The Southern District of New York, which in 2007 had reported a surge of more than 6,500 personal injury filings related to the terrorist attacks in New York City on September 11, 2001, had 3,900 fewer personal injury filings this year. Labor law cases fell by 10 percent, down by more than 1,800 cases. The Northern District of Alabama, which had received more than 2,400 filings under the Fair Labor Standards Act in 2007, had 2,300 fewer

See Appendix next page

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of those cases in 2008. Copyright cases declined by 27 percent, down by 1,166 cases nationally.

Filings that involved the United States as plaintiff or defendant fell by 3 percent to 44,164 cases, a decline of 1,300 cases. The number of cases in which the United States was a defendant dropped by 4 percent, down by 1,385 cases, as filings of federal habeas corpus prisoner petitions decreased by 8 percent. The number of cases in which the United States was a plaintiff remained relatively stable. That number rose by less than 1 percent, as a result of a 10 percent increase in defaulted student loan cases.

The number of criminal cases filed in 2008 rose by 4 percent to 70,896 cases, and the number of defendants in those cases increased by 3 percent to 92,355 defendants. The median case disposition time for defendants declined slightly from 7.0 months in 2007 to 6.8 months in 2008, as the proportion of defendants convicted of immigration law violations, which typically have shorter processing times than other crimes, rose in the overall criminal caseload.

Immigration criminal case filings jumped by 27 percent to 21,313 cases, and the number of defendants in those cases rose by 26 percent to 22,685 defendants. That growth in immigration cases resulted mostly from filings addressing improper reentry by aliens and filings involving fraud and misuse of visa or entry permits in the five southwestern border districts. Sex offense case filings grew by 9 percent to 2,674 cases, and the number of defendants in those cases climbed by 7 percent to 2,760 defendants. The increase in sex offense filings stemmed from cases involving sexually explicit material and sex offender registration. The number of drug cases dropped by 7 percent to 15,784 cases, and the number of defendants charged with drug crimes fell by 3 percent to

28,932 defendants. Those reductions occurred when investigative agencies shifted their focus from drugs to terrorism and sex offenses.

The Bankruptcy Courts

Filings in the United States bankruptcy courts rose by 30 percent from 801,269 cases in 2007 to 1,042,993 cases in 2008. The increase in bankruptcy filings in 2008 is nearly equal to the decline in bankruptcy filings that occurred in 2007, the first fiscal year in which all 12 months of filings occurred after the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. The bankruptcy courts received 1,112,542 filings in 2006, which encompassed the last weeks before the effective date of the Act—October 17, 2005. The number of bankruptcy filings in 2008 was 6 percent below that figure. Between 2007 and 2008, non-business filings, which accounted for 96 percent of all filings, rose by 30 percent, and business filings increased by 49 percent. Chapter 7 filings increased by 40 percent, Chapter 11 filings by 49 percent, and Chapter 13 filings by 14 percent, while Chapter 12 filings fell by 8 percent in 2008.

Pretrial Services

Both the number of defendants activated in pretrial services, including pretrial diversion cases, and the number of pretrial services reports prepared by Pretrial Services officers increased by 2 percent in 2008. The number for defendants activated increased from 96,259 persons to 98,244 persons.

Post-Conviction Supervision

In 2008, the number of persons under post-conviction supervision continued to increase, this year by 4 percent to 120,676 individuals. As of September 30, 2008, 95,159 individuals were serving terms of supervised release after serving terms of imprisonment at a correctional

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institution, representing 79 percent of all persons under post-conviction supervision. In comparison, during 2007, the number of persons serving terms of supervised release represented 77 percent of all those under post-conviction supervision. Persons on parole declined almost by 8 percent, from 2,575 individuals in 2007 to 2,378 individuals in 2008. Parole now accounts for less than 2 percent of post-conviction cases. Both district judges and magistrate judges are imposing fewer sentences of probation, and the number of persons on probation decreased by 994 to 22,980. That number represented 19 percent of all persons under post-conviction supervision. Approximately 46 percent of the persons under post-conviction supervision are being supervised on account of a drug-related offense. 

IMPACT OF 2005 BANKRUPTCY ACT ON BANKRUPTCY FILINGS

Mr. SERRANO. We thank you both for your testimony.

I would like to start off by asking you some questions about the whole bankruptcy issue and bankruptcy courts. I will put together some questions basically to let us know if the 2005, how the 2005 changes in law have affected the workload. My understanding is that, while less bankruptcy filings have taken place, each of those filings, in fact, have become more complex and more time-consuming.

Secondly, in the last year, with the deep recession in place, has that affected dramatically the whole bankruptcy issue? And how does that affect the staffing needs and the workload, at the different courts?

And lastly, what role does the court have in assisting people who are considering bankruptcy? Is there an educational role that the courts can play?

Judge GIBBONS. I will take a shot at that three-pronged question.

First, the 2005 statute, while creating a disincentive to filing and thus resulting in reduced filings, did make the cases that were filed more time-consuming to handle. We see that in several objective ways. One is that the number of docket entries after the new statute was just about the same as it was before the statute's enactment even though the number of cases filed was much smaller.

Also, the number of notices that the courts were required to send went up, as did the number of orders that bankruptcy judges were required to enter.

There are some underlying reasons for that. For example, the new credit counseling requirements under the act, the Means Test, which sends more people into chapter 13 instead of chapter 7, require additional work; and there are more pro se filings in the bankruptcy courts now probably because of the attorney liability provisions of the Act. And, the pro se cases bring with them their own element of difficulty.

Ever since the filings hit a low, just after enactment of the Act, they have been moving back up. We have seen some rather dramatic increases recently, as one might expect. We have seen about a 30 percent increase for the 20-month period ending June 2008. We expect another 27 percent increase for the 12-month period ending June 2009, and another 13 percent increase for the 12-month period following that. Of course, these future figures are simply projections, and the 13 percent figure, in particular, might be open to question depending on how we see the economic situation unfold.

Finally, in terms of education and help, for people who are considering bankruptcy, yes, the bankruptcy courts have seen that they have a role. Of course, the credit counseling, which I have already referred to, is built into the new statute. But there is also a program called Credit Abuse Resistance Education (CARE) which now operates in all 50 States. It was initiated by a bankruptcy judge who then enlisted the help of bar organizations and other bankruptcy judges. It provides education and counseling.

In addition, many bankruptcy courts make an effort to get into the high schools to counsel students about financial pitfalls that may lie ahead.

Mr. DUFF. I would just add that there may be regional differences in the bankruptcy filing increases that we are starting to experience, and we will keep our eyes on that as well.

Mr. SERRANO. You said there may be or you already know there are?

Mr. DUFF. It looks like it is trending that way. There are pockets in the country where there are many more filings than in other areas of the country.

Mr. SERRANO. What areas would that be?

Mr. DUFF. Major urban areas, certainly, we have seen increases. But, the figures aren't firm enough yet to give a report.

Mr. Serrano. I don't know if you mentioned this and I missed it. We spoke about the percentage increase, but in hard numbers, do we know, for instance, over the last year or so how many filings have taken place?

Judge GIBBONS. Yes, we do.

I have the annual filings since 2005, on a chart, and perhaps it would be illustrative if I gave you the totals for each year: 2005, 1,783,422; 2006, 1,107,874, and these are the fiscal year figures, so the 2006 figure includes the huge peak in filings that occurred right before the statute took effect in October 2005; 2007, 802,408; 2008, 1,042,993; and year-to-date in fiscal year 2009, 602,358. For March, the month we are now in, the projected filings are 115,000.

[CLERK'S NOTE.—Subsequent to the hearing, the Judiciary provided the following additional information:]

BANKRUPTCY FILINGS BY MONTH

2005		2006		2007		2008		2009	
October	130,723	October	630,228	October	61,647	October	83,279	October	108,564
November	122,834	November	14,521	November	59,120	November	75,875	November	91,397
December	118,247	December	23,004	December	57,103	December	67,396	December	95,781
January	109,014	January	28,215	January	57,200	January	72,173	January	89,219
February	122,986	February	36,502	February	60,497	February	81,471	February	102,397
March	169,376	March	51,230	March	77,061	March	92,296	March	115,000
April	167,943	April	48,578	April	69,645	April	95,239		
May	152,495	May	51,694	May	71,971	May	91,383		
June	147,197	June	54,829	June	69,137	June	91,590		
July	133,707	July	52,016	July	70,870	July	98,202		
August	167,800	August	59,565	August	79,022	August	96,056		
September	241,100	September	57,492	September	69,135	September	98,033		
Total	1,783,422	Total	1,107,874	Total	802,408	Total	1,042,993	Total	602,358
Avg/month excl. Sept.	140,211	Avg/month excl. Oct.	43,422	Avg/ month	66,867	Avg/ month	86,916	Avg/ month	100,393

Mr. DUFF. And, as to the regional differences, we have seen dramatic rises in foreclosure rates most notably in California, Florida, and Nevada, and in States that have experienced surges in unemployment, most notably Ohio and Michigan. So we already have seen trends there.

Judge GIBBONS. I might add, too, with respect to education, that on our Judiciary Web site, there is a primer on bankruptcy, called "Bankruptcy Basics," with information for the general public on bankruptcy laws, the different chapters, and answers to some frequently asked questions. There is also a program designed for high school students, called "Your Day in Bankruptcy Court." And it is intended to be an educational program about the wise use of credit, the consequences of filing bankruptcy, and the like.

Mr. DUFF. In addition, the projections for March this year are the highest they have been since BAPCPA, the Bankruptcy Act was enacted in October 2005.

Mr. SERRANO. Thank you.

Since my question, Mrs. Emerson, was really three questions in one, I will now recognize you.

JUDICIAL EXPERTISE IN COMPLEX CASES

Mrs. EMERSON. Thank you, Mr. Chairman.

I might as well stay on the financial, economic frontier. And obviously, with such complex financial markets and spectacular cases of fraud associated with them, like Mr. Madoff's Ponzi scheme, can you explain to us how judges keep their skills and expertise current in order to hear and understand criminal and civil corporate fraud cases brought to them by DOJ and the Securities Exchange Commission? Do you all get tutorials on the financial markets? And I don't mean that at all disrespectfully, but seriously, they are such complex issues.

I am just curious, you know, if you don't usually deal with credit default swaps or collateralized debt obligations or mortgage-backed securities, and suddenly, you know, these are terms all of us have had to learn, or learn more about, in the last many months, how does that work for you all on your side?

Judge GIBBONS. Well, Federal judges are among the last remaining generalists in the law, so we are not specialists, and obviously, we do not know everything about every kind of case when it walks in the door.

But, if you were, say, a district judge, you are accustomed to having cases of a very complex nature that you may not have seen before come in the door, whether it is the complex patent case, the complex environmental case, or the complex financial or commercial case.

In the financial commercial area, though, this sort of complex litigation is really a staple of the civil side of what Federal courts do, perhaps not to the extent or the degree that may be seen in the coming months and years, and certainly, some courts have more experience in that area than others. But judges are used to cases where they have to get up to speed quickly.

The process of the case unfolding typically provides a good opportunity for the judge to do that as the parties file motions and the judge has an opportunity to read—typically not only the briefs in

the case—but also much of the underlying discovery, depositions, affidavits, things of that sort. And, if the case is tried, basically each side has expert witnesses. The judge also has the authority, under our rules, to appoint an independent court expert who is not aligned with either party in the case if that is necessary.

I referred to financial fraud cases as being a staple on the civil side. But in some districts, judges have pretty extensive experience with those on the criminal side as well, although I would expect that some of the fraud that has been tried criminally will be of a simpler nature than those we may be seeing in the coming months and years.

But that is pretty much how it works. The Federal Judicial Center does provide some publications that are helpful to judges. I don't know specifically if there are any in this particular area or not.

Mr. DUFF. Actually, there was a program this past year on financial markets that the Federal Judicial Center put on for judges who wished to attend, and the feedback on that was very positive. It was very helpful on terminology and putting in perspective what was happening. And the FJC, the Federal Judicial Center, received very high marks from the judges who did attend.

Mrs. EMERSON. I appreciate that. Thank you.

Mr. Chairman, do I still have time? I don't think I have talked for 5 minutes yet.

Let me switch over to the defender services, and I must say for full disclosure that I do have an attorney husband.

Mr. DUFF. Our condolences.

PANEL ATTORNEY HOURLY RATE INCREASE

Mrs. EMERSON. And while he doesn't do, he is not a trial lawyer. Well, he is. He considers himself a trial lawyer. I don't know if he really is or not, but he spends a lot of time at court.

Mr. SERRANO. As a public disclosure, we are both law makers.

Mrs. EMERSON. But with regard to the requested increase for public defenders up to an hourly rate of \$142 for your panel attorneys, I understand the fact that they have got to pay overhead and the like. And so I am empathetic, to some extent, because obviously, part of my own income is dependent on those sorts of things as well.

GEOGRAPHICAL PANEL ATTORNEY RATES

But do you make any differentiation between regions, geographical regions of the country? For example, in Cape Gerardo, Missouri, I know that the going rate for an attorney is nowhere close to what it is in Washington, D.C., nor is St. Louis as close to Washington, D.C., as some might think. And so I don't know, how do you adjust those rates accordingly?

Judge GIBBONS. We have considered the possibility of geographic-based rates and, for various reasons, have concluded that that would not be appropriate for the Judiciary at this time.

First, we think it would be difficult to develop the objective criteria that would be necessary. We also think it would be administratively quite burdensome to attempt to pay attorneys at one rate in one place and at another rate in another.

It would make it more difficult to project our annual funding requirements as well.

But you are correct that panel representation would definitely be more attractive to an attorney in an area where overhead fees were not generally so high. It is an issue we are aware of. We have looked at it. I am sure we will continue to look at it. But up to this point, we have not decided that it is the way to go.

Mrs. EMERSON. Let me just say that, you know, Federal employees, for example, get paid differently in different locations. My son, who is a lieutenant in the Army, you know, gets a temporary duty assignment somewhere, and he gets a certain pay for that particular area, but if he goes somewhere else, it is a lower pay. And so, I mean, there are certain criteria in place to make those decisions.

I understand that sometimes it is cleaner just to do across-the-board. But there are different ways to do it.

And in my congressional district, actually, for my budget, to go back and forth to my district, it is less than or probably more than the Chairman's because I live farther. So——

Judge GIBBONS. Well, the locality pay tables that are used for many Federal employees might provide a way of doing it. Within the Judiciary, we have employees who are subject to locality pay and others, like judges, who are not. And so far, the panel attorneys, they are not.

Mrs. EMERSON. I would just ask that perhaps it might be a consideration if money is going to be an issue or given our budget constraints.

Judge GIBBONS. I think that this hourly rate, although we are very appreciative for the increase, this is a pretty low hourly rate, even for a lawyer in a fairly small town or rural area these days. It certainly is a low rate for a small- to medium-sized city.

So I think it is a low rate almost across-the-board, if not entirely across-the-board.

Mrs. EMERSON. Thank you.

Mr. SERRANO. Thinking about your son, I remember when I was in the Army, they would say, if you got assigned to Hawaii, you should pay the Army for sending you to paradise.

Mrs. EMERSON. Unfortunately, he has not gone to Hawaii.

Mr. SERRANO. Mr. Culberson.

JUDGES SALARIES

Mr. CULBERSON. Thank you, Mr. Chairman.

Thank you very much for your service.

I know how difficult it is; one of the things I know that my colleagues hear commonly, as I do, is the difficulty that the judges have with the salary levels. I hear constantly about the problems of lack of pay raises over the years.

I wanted to ask you to comment briefly on that. How substantial a problem do you think that is and how often do you hear about it from judges across the country?

Mr. SERRANO. Well, it is a very substantial problem, and I hear about it every day.

Mr. CULBERSON. What effect does it have?

Mr. DUFF. The effect on their morale has been very, very significant within the Judiciary. I think it is having an impact on life tenure on the bench. We are seeing more and more judges leave the bench in record numbers, not to retire but to do other things. And those other things involve higher pay, usually, almost nine-tenths of the time. If they achieved the rule of 80, which is age 65 and 15 years of service, they will leave for more lucrative positions.

Mr. CULBERSON. What is a judge's salary today?

Mr. DUFF. Well, now, after the COLA this year, a District Court judge makes \$174,000 a year. Courts of Appeal judges make a little more. Judge Gibbons knows the precise number, I am sure.

[CLERK'S NOTE.—Subsequent to the hearing, the Judiciary provided the following additional information:]

2009 JUDICIAL SALARIES

Office	Salary
Chief Justice	\$223,500
Associate Justices	213,900
Circuit Judges	184,500
District Judges	174,000
Judges, Court of International Trade	174,000
Judges, Court of Federal Claims	174,000
Bankruptcy Judges	160,080
Magistrate Judges (Full-Time)	160,080

But it is having an impact on life tenure. It is having an impact on recruiting to the bench.

Mr. CULBERSON. Record number of retirements I heard you say.

Mr. DUFF. Record number, well, we have had, I think there is now 55, I will get the exact number for you, former judges are in arbitration services now which is more lucrative. They are essentially doing some of the same kinds of things that they did on the bench but in private arbitration services.

[CLERK'S NOTE.—Subsequent to the hearing, the Judiciary provided the following additional information:]

Trends in Judicial Resignations and Retirements

Since January 1, 1990, 118 Article III judges have resigned (without any right to an annuity) or retired from the federal bench. Sixty-three of those judges have stepped down since January 1, 2000. Of those 63 judges, 35 judges have left the bench since January 1, 2005.

Recent Departures

Of the 35 judges who have left the bench since January 1, 2005, 29 of these judges sought other employment. Six of these judges “retired” to join JAMS, a private firm comprised of former federal and state judges that provides dispute resolution services, where they have the potential to earn the equivalent of the district judge salary in a matter of months. Another judge resigned from the bench (without any right to an annuity) to join JAMS. Thirteen judges entered the private practice of law (presumably at much higher salaries). Two judges resigned to become corporate in-house counsels. Three judges resigned to accept other, higher paying governmental positions (two in state government and one in the federal government). Another judge accepted an executive branch appointment at the same salary. Two judges resigned to accept appointments in higher education. One judge retired to accept an appointment to a quasi-governmental position.

The table below shows the number of departures that has grown in tandem with the financial pressure of being an Article III judge:

Time Period	Number of Departures
1958 to 1969	3
1970 to 1979	22
1980 to 1989	41
1990 ¹ to 1999	55
2000 to October 28, 2008	63

¹ Under the Ethics Reform Act of 1989, Pub. L. No. 101-194, judicial salaries were increased to reflect the previously denied 1989 and 1990 cost-of living salary adjustments (4.1 percent and 3.6 percent), compounded at 7.9 percent, effective February 1, 1990. The act further provided for a 25 percent increase in judges’ pay, effective January 1, 1991.

Of the 63 judges who have left the federal bench since January 1, 2000, 45 retired from the judicial office and 18 resigned before reaching retirement age (without any right to annuity). Forty-one (or 65 percent) of these judges entered the private practice of law (including mediation/arbitration). Six judges accepted appointments to other government or quasi-government offices (two in the federal executive branch, three in state government, and one in a quasi-government agency). Two judges accepted appointments in academia and one judge accepted an appointment as chief legal officer of a not-for-profit institution.

Historical Analysis

Of the 118 judges who have left the federal bench since 1990, 89 retired from the judicial office and 29 departed before reaching retirement age (without any right to an annuity). At least 71 of the aforementioned 118 judges (60 percent) stepped down from the bench to enter the private practice of law (including private dispute resolution firms). Twenty-three judges sought other employment (e.g., government and quasi-government agencies, academia, and the non-profit sector). This means that 80 percent of judges who left the federal bench did so for other employment and, in most cases, for significantly higher compensation.

Many former federal judges (both Article III and non-Article III judges) have become private mediators/arbitrators. Indeed, 33 former federal judges are currently affiliated with a mediation/arbitration service called FedArb. Twenty-three other former federal judges are affiliated with JAMS.

An often overlooked aspect of the departures problem is how it disproportionately impacts certain courts. For example, the District of New Jersey has lost seven judges through resignations (2) and retirements (5) since 2000. All seven judges entered the private practice of law. The Central District of California has also lost six judges through resignations and retirements since 2000. Two of these judges resigned from the federal bench to accept appointments to the California state bench. (California state judicial salaries are higher than federal judicial salaries.) One judge resigned from the bench to join JAMS. The other three judges “retired” to join JAMS. Similarly, the District of Columbia has lost four judges through retirements since 2000. Three of these judges “retired” to the private practice of law.

While the absolute numbers may not seem large, it is significant that a substantial proportion of these separations appear to be related to compensation. That the numbers seem to be on the rise, and that a number of the departing judges were eligible for (or were in) senior status (when judges traditionally continue to give their energies to judicial service long after they retire from active service) or were younger, active judges without entitlement to an immediate or deferred annuity should give rise to concerns. For judges to emulate the pattern of executive branch federal service and use the position as a mere stepping-stone to reentry into the private sector and law firm practice is inconsistent with the traditional lifetime calling of federal judicial service.

Mr. CULBERSON. That would be very helpful. I would love to see that. I know the committee would also be interested. I know the judge cannot necessarily advocate for that one way or the other. So I am glad you spoke up, Mr. Duff.

Our chairman, I know, is very gracious with his time, and we do have a limited amount of time, so forgive me for diving back in.

IMMIGRATION ENFORCEMENT AND PROSECUTION

In another area, and I know, Judge, I would like to, if I could, direct this to you, Judge Gibbons, is, it is self-evident that uniform and equal, uniform and equal administration of justice is vital to effective deterrent to criminal activity. And where you see the law enforced, you see decline in criminal activity.

I was particularly struck on page 12 of your testimony that you point out that Congress has provided additional resources to fill Assistant U.S. Attorney positions, particularly in the five judicial districts along the southwest border, have had an impact on criminal case filings and that you are seeing a decline in criminal case filings. Nationwide, you said you are projecting a 4 percent decline in criminal filings.

And I know from personal experience, I represent Houston, Texas. I don't represent the border. But I have worked very closely with my colleagues from Texas in both parties, I want to stress, particularly Congressman Ciro Rodriguez, he and I and Henry Cuellar were elected together in 1986 to the Texas House. And I have worked arm in arm with these guys and with the prosecutors, the judges, along the southwest border. Judge Alia Ludlum, a district judge in Del Rio, finally, the folks in Del Rio got tired of the crime and the drugs that spilled over, and Judge Ludlum actually initiated, along with the help of the sector chief there, Mr. Chairman, they got together, and they noticed a lot of the U.S. Attorneys were going home like 4 o'clock in the afternoon, and crime was running rampant in the streets of Del Rio.

So she initiated, got everybody together in the room and said, we are going to enforce the law. We are going to do this uniformly and consistently, and you guys are going to work the hours. And it was a cooperative effort, Mr. Chairman, with the Border Patrol, the sector chief of the Border Patrol, the U.S. Marshals, the sheriff, the prosecutors. The magistrates were a critical part of this process as well. And the local community, they did it with the mayor, the city council, the commissioners, the Chamber of Commerce. The local community was actively involved, and everybody supported it, and they initiated a program called Operation Streamline in the Del Rio sector with the overwhelming support of the local community, which is 96 percent Hispanic, in the border communities. As a result, the crime rates dropped about 80 percent in Del Rio. And then with essentially existing personnel, and however, needed a few additional prosecutors. Border Patrol assigned those. I also serve on the Homeland Security Subcommittee.

And then it was rolled out about a year and a half ago in the Laredo sector. They have seen a 60 percent drop in the crime rate and a corresponding drop in the number of criminal cases. And the streets are peaceful. Kids can play in the streets and don't have worry about it. Local community loves it. We are trying to get it

rolled out in Laredo—in the Rio Grande Valley sector. Again, this is all being done by the local community, local elected officials. Everybody is arm-in-arm.

What I am leading up to, Judge, is that in the Tucson sector—or let us say, if you cross the border in between Del Rio, Lake Amistad and Zapata County in Texas, you have about a 90 percent chance of being arrested, prosecuted, and incarcerated for a brief period of time, and deported under existing law. And the officers, obviously, use good sense. They are not going to arrest women and children. They use good judgment, as you would expect an officer with a heart to do.

But the effect has been that they actually have vacancies in the local jails, in the beds, and that people don't cross in Del Rio and Laredo.

However, I wanted to ask you about, and bring this to the attention of the committee as well, in the Tucson sector, as a dramatic contrast, if you cross the border in the Tucson sector, you have a 99.6 percent chance of never being prosecuted if you are carrying less than 500 pounds of dope. They actually had the U.S. Attorney there, who is no longer there, she was—I think there is a vacancy in Tucson.

What I wanted to ask, Judge, is these additional prosecutors, the additional resources that have been assigned to the five judicial districts along the southwest border and the U.S. Attorney's Office, the Department of Justice, Mr. Chairman, told me that if last year's budget request was fulfilled, and it was actually increased a little bit in the omnibus, that they would have ample resources to enforce, to do Operation Streamline, the zero-tolerance policy, up and down the entire border.

I wanted to ask, Judge, number one, are you familiar with the complete lack of law enforcement in the Tucson sector, number one? And Judge Roll, by the way, has been very supportive and helpful in trying to find a solution to this. But the U.S. Attorney absolutely refuses to prosecute, not just cases from the Border Patrol, Mr. Chairman, but DEA arrests, FBI arrests, ATF arrests.

They actually got on video, they had a caravan of vehicles coming over from Mexico carrying dope. And they had this all with the remote, the UAV, very expensive vehicle, like the aircraft like they use in Afghanistan. I saw this myself at Fort Huachuca in Arizona. Had the video, gave it on a silver platter to the prosecutor, carrying I don't know how many hundreds, thousands of pounds of dope. The Border Patrol, DEA, risked their lives at 2 o'clock in the morning to go in there and arrest these guys; snakes, cactus, guys are carrying weapons, heavy armor, you know, heavy artillery. They arrest them, and the U.S. Attorney says, "No. I am not going to prosecute them."

Thank you for your indulgence. I know the Chairman has allowed me a little extra time.

But, Judge, it is an important question, because where the law is enforced, the local community loves it, the people are safe, kids can play in the streets. Yet in Tucson, it is wide open.

What, if anything, can you do to help us make sure that the law is enforced in the Tucson sector? It is absolutely the Wild West out there today.

Judge GIBBONS. I don't have any information about differing crime rates in different locations along the border, nor do I have any information about how particular U.S. Attorneys decide their own prosecutorial policy, but I do have a little bit of information about Tucson.

And the information that I do have suggests to me that perhaps some of your concerns are being addressed. Although, I can't really speak to the way in which you phrased the question.

The information I have about Tucson indicates that the U.S. Attorney's Office is working to fill 21 new positions authorized in May 2008 for the purpose of pursuing immigration prosecutions. Despite the fact that some of these positions are still vacant, the criminal felony filings in January 2009 for the Tucson division were up 72.2 percent over January 2008. And it is anticipated that that number will continue to rise as the vacant assistant positions are filled.

I believe that Tucson does participate in a variation of Operation Streamline, and all of these border places of holding court seem to have adopted different versions and different local variations on Operation Streamline.

When I use the term "operation streamline," I am essentially using it to refer to a program under which large numbers of petty offenses are handled very expeditiously.

Mr. CULBERSON. Yes, ma'am, that is correct.

Judge GIBBONS. Often it is same-day handling when the defendant appears, makes an initial appearance, enters a plea and is sentenced the same day. No formal pre-sentence is prepared, but rather the judge relies on a record check.

The process is characterized typically by close cooperation by the U.S. Attorney, the Federal defender and the court because, otherwise, that sort of handling could not occur.

In Tucson, the particular program, which is called Arizona Denial Prosecution Initiative, and it exists apparently in other Arizona locations as well, has a variation of this. In 2008, a total of 13,786 petty offenses were handled in Tucson; 70 cases prosecuted each day. That is the information I have. I can't speak to the particular situation there any further, really.

Mr. CULBERSON. It needs your attention. I know that, in your role as a—

Judge GIBBONS. We are, of course, always concerned about what happens in our courts. But I am sure you are aware that the Department of Justice does not work for us nor do individual U.S. Attorneys, and we are the recipients of the cases they decide to bring rather than the originators of them.

Sometimes judges do feel it is appropriate to wander into that a little bit, and sometimes U.S. Attorneys think those judges are meddling.

Mr. CULBERSON. The 76 percent increase you referred to, there were only 76 prosecutions. Out of 800,000 people arrested by the Border Patrol, only 76 of those 800,000 were prosecuted by the U.S. Attorney in Tucson in January 2008. So that is the number, 76 percent increase. We just need your help.

Judge GIBBONS. I have kind of exhausted my statistics.

Mr. CULBERSON. But it needs your attention is all I am asking. Thank you for your indulgence, Mr. Chairman.

Mr. SERRANO. Well, we may have a difference of opinion.

When you say “we need your help,” we have to be careful with that because the neutrality of the court is in question. The court is supposed to deal with what comes before them, not encourage anything to come before them.

I think that you might have a strong case about people not being prosecuted. But that certainly is not the role of the court. It is the role of the law enforcement agencies that are not prosecuting them.

And there are many instances where I want more prosecution, but the very minute the court begins to discuss whether or not there should be prosecutions, I am not a lawyer, but that is a mistrial right there if this was a trial.

Anyway, let me—but I don’t downplay the issue around the border and the fact that the gentleman has been steadfast, from all of the time that I have seen him in Congress, speaking on the issue of prosecution and taking care of the border.

Mr. CULBERSON. Fair and compassionate—

Mr. SERRANO. And I respect that. Fair and compassionate is important.

Mr. CULBERSON. It is.

PANEL ATTORNEY HOURLY RATE INCREASE

Mr. SERRANO. Let me go back a second to the issue of panel attorneys.

I want to know about the rationale for further increasing the Judiciary budget this year. I understand that you conducted some research in the past couple of years regarding fees for panel attorneys. What did the research find? What would be the effect of not providing any further increase?

Judge GIBBONS. We did a survey a little while back. But, in terms of talking to you about the increase, we think that we should not rely on a survey that was done before the \$110 rate had been tried out. I think you might have been referring to the one we talked about last year.

However, we did a survey in January of 2009 of panel attorneys, and we learned that their hourly average overhead cost is \$70 an hour, which means that the part of that \$110 that will be going in their pockets is \$40 an hour. We learned also from our 2009 survey that retained lawyers on average charge \$246 an hour. Obviously, a big spread in terms of what is going into the pocket of the lawyer after overhead is paid.

We also know that the Department of Justice pays \$200 an hour for lawyers with 5 years experience who represent Federal employees in civil and criminal matters.

We know, historically, in a general way that we have had trouble in many locations attracting qualified lawyers to be members of our Criminal Justice Act Panel.

And, of course, our rationale for getting to the \$142 we seek is that that is the rate that would apply had the annual inflationary increases that were authorized by the Criminal Justice Act in 1986 been fully funded. That is what influences the choice of the particular dollar amount we seek rather than any sense that that is the magic number that would allow us to attract the high-quality

lawyers, those who would invariably render the effective assistance that defendants are entitled to under the Constitution.

Mr. SERRANO. Any comments on that?

Mr. DUFF. No. I would agree with Judge Gibbons.

AO STRATEGIC PLAN

Mr. SERRANO. Director Duff, I understand you have undertaken some initiatives designed to improve the Administrative Office of the Courts and in support of the U.S. Court System, including bringing in staff to provide input on the performance and management of the agency.

Could you tell us a little bit about your strategic planning and management initiatives?

Mr. DUFF. One of the things we are very excited about is an exchange program that we are setting up between the courts and staff at the Administrative Office whereby we are sending staff from the Administrative Office out to the courts for hands-on experience and observation and learning firsthand the courts' needs and working with people. This is on a temporary basis. And vice versa, we are bringing people in from the courts, administrative personnel from the courts into the Administrative Office for a period of time to see how we function. And, we are integrating our services, I think, very effectively that way.

The response we have been getting from the courts has been very encouraging in that regard. And as I mentioned earlier, we have reduced the staff levels at the Administrative Office to below what they were 15 years ago. We have managed to maintain services and become more efficient, I think. So that has been very encouraging, and the feedback from the courts has been positive, too.

Mr. SERRANO. And you had wide participation when you did this.

Mr. DUFF. Well, it is going to increase. We are phasing this in. Of course we are mindful of the funds that we have to do this, but it has been effective, even in the small numbers that we have started this with.

FEDERAL PROTECTIVE SERVICE COURT SECURITY PILOT

Mr. SERRANO. Let me ask you a question about court security, the court security part of the program. The fiscal year 2010 budget request includes \$7.3 million for one-time court security costs, including implementation of the court security pilot program, which this subcommittee authorized in fiscal year 2008. Last year we were told that the plan's implementation date was fall 2008. But to my knowledge, this pilot still has not gotten underway, at least not in more than one courthouse.

Please update us on the progress of this part of the program, including why it is taking so long to get started.

I also understand that you are requesting an increase of \$7.3 million for 2010 for implementation of this project. Why are those funds needed? I thought the court security pilot project was supposed to be budget-neutral.

Judge GIBBONS. With regard to the cost of the pilot, I will certainly go back and see what we represented about that and why we are now saying something different, if we indeed are.

The pilot project is underway in all of the seven locations. It did take a bit longer than we anticipated. And actually there are now, I think a bit surprisingly, given the state of the economy, some vacant CSO positions within the pilot program. We have been told that the reason for those vacancies is that perhaps court security officers who have been out of the workforce for a time are applying for the positions, and that there are being more incidents of failed medical examinations and unacceptable background checks than might be expected. So that has been a difficulty that they have had. But to my knowledge, the program is underway.

We expect that the Marshals Service is establishing reporting requirements with respect to all the sorts of security incidents that occur in a building. And we expect to have good information from the pilot program at its conclusion.

Mr. DUFF. I am told that the budget increase is for FPS costs, but that the pilot project is cost-neutral. The request for increased funds is not related to the pilot program.

Mr. SERRANO. So it is neutral.

Judge GIBBONS. The FPS budget increase is a result of the estimate that the FPS has given us for maintaining current services. They charge us this fee, and only about \$150,000 of the amount requested is for new space that we will be occupying. The remainder is just the amount that FPS is intending to increase the fee.

VIOLENCE ON THE BORDER—SECURITY OF JUDGES

Mr. DUFF. Mr. Chairman, if I might, there is one other related follow-up point on what Congressman Culberson raised earlier about the violence on the borders. We are concerned about how that might spill over to the courts and judges. There may be a point in time where we would come to the committee for help in that regard. But you were absolutely right about the role of the courts in law enforcement. That is not within our jurisdiction. But that situation on the border has raised some security concerns for us, so that is something we are paying close attention to.

Judge GIBBONS. And I am not sure whether Representative Culberson was talking about the sort of spillover violence that we are concerned about from things that are happening in Mexico now, or whether he was just talking about crime that would occur otherwise, domestic crime as it were.

Mr. DUFF. My impression was it was the latter. And I think the Chairman was right about our role in that. It is very limited.

Mr. SERRANO. Well, in his absence, to his credit he has always been strong on the issue of border security and crime along the border, so I am sure he was speaking to all of the above.

Mrs. Emerson.

OVERSIGHT OF GSA COURTHOUSE PROGRAM

Mrs. EMERSON. I actually have some kind of technical questions I would like to ask if I could. You were talking about the stimulus money and how that was going to enable you to at least get started on the five courthouses that you wanted to work on.

But let me ask you a question. I guess you all pay about \$1 billion a year to the General Services Administration, as you all know. That is also under our jurisdiction. Do you play any over-

sight role, any oversight of GSA in their construction of courthouses, just to ensure that they stay on time and under budget? But I really shouldn't even—I can't equate a courthouse with on budget and on time, at least in my own personal history of courthouse construction. But there may be some.

But I mean, how do you all—because in building our courthouse in Cape Girardeau, other than if I would call the judges and say, would you please get on them because we are having some issues here—because I figured it was best to come from both sides—I mean, is there a formal role that you all are supposed to play, or is it just like if someone like me calls you up and says you need to beat up on these guys.

Mr. DUFF. In my experience I never had to call the judges to encourage them to complain about anything with regard to their courthouse project. They take that initiative on their own. My experience has been that the judges are pretty vigilant about paying attention to the needs of the courts when there are construction projects in their districts.

I don't know that I would say they micromanage these projects. But we do have judges and court administrators at the locations where the projects are undertaken involved in pushing and prompting and encouraging timely completion. Although we don't have ultimate control over the project, we certainly agitate where it is needed and encourage where it is needed.

We also have a Judicial Conference Committee, our Space and Facilities Committee, that pays close attention to the projects around the country and the needs around the country.

NON-RESIDENT COURTHOUSES

Mrs. EMERSON. Are there any underutilized or nonresident courthouses that you don't need anymore?

Judge GIBBONS. I don't know the specific answer to your question. But there is a process by which our Space and Facilities Committee looks at those kinds of issues and determines whether facilities are no longer needed.

You know, I am from the Sixth Circuit, and I recall an incident where a building in Ohio was turned back to—I can't recall whether it was GSA, but we are no longer occupying that building. And there is a formal process for doing it.

[CLERK'S NOTE.—Subsequent to the hearing, the Judiciary provided the following additional information:]

In March 2006, the Judicial Conference adopted revised criteria that included a cost-benefit analysis for circuit judicial councils to use when determining whether to close non-resident facilities (JCUS—MAR 06, p. 28). Since that time, non-resident facilities in Thomasville, Georgia and Ft. Dodge, Iowa have been closed. At the present time, there are no other facilities under consideration for closure.

INFORMATION TECHNOLOGY

Mrs. EMERSON. I appreciate that. Let me ask you about the information technology tools and investments that you all want to make, particularly for both information technologies and telecommunications programs.

I would like to know, number one, how you believe that investment will improve court operations. Would such an investment pos-

sibly reduce the need for additional staff, staffing requirements in the future? So answer those first, and then I have one follow-up.

Judge GIBBONS. The information technology projects that have been brought to fruition within the Judiciary have been very successful and have really enhanced the courts' ability to do their work.

Probably the one that deserves most discussion is what we call CM/ECF. The Case Management Electronic Case Filing system was developed entirely within the Judiciary specifically for its users, extensively piloted and tested within the Judiciary. All of the bankruptcy courts and the district courts are now, and have been for some time, doing electronic case filing and case management. The appellate courts are now coming on-line. It is not just a great benefit to us and our staffs and the way we operate, but also to the public and to lawyers and parties who come before the court.

We also have automated the system by which our probation officers get information that aids them in supervision. We have an automated accounting system, an automated personnel system. And then, of course, our e-mail system is Lotus Notes. Appellate courts, for example, function almost exclusively now through e-mail and sometimes fax communication.

Mrs. EMERSON. So—

Judge GIBBONS. Do you want me to go on to part two?

Mrs. EMERSON. Yes, do part two, please.

Judge GIBBONS. Okay. Staffing.

Yes, there have been some staff savings, although it is sometimes hard to figure out what the direct correlation is. We know that in the bankruptcy area, bankruptcy courts were able to operate with fewer staff. When we went to the automated systems, and particularly automated noticing, prior to the new statute in 2005, even though the bankruptcy filings had continued to go up, bankruptcy staff was down 3.5 percent. And we attribute that to automation.

In the probation and pretrial area there has really been a reconfiguration of who the personnel are. The Probation and Pretrial Services Offices now utilize 25 percent fewer support staff people, and they are able to function self-sufficiently and independently in the field with all the new tools they have been given.

Consolidation of servers has also been a big saver for us. Time is saved by the processing of financial transactions automatically. And then there is the whole issue of the use of its technology in trial, which through presenting evidence, video evidence and the like, can really enhance the trial experience for jurors in particular.

Mrs. EMERSON. I appreciate that, because there are so many different agencies with whom we work who are trying to upgrade their IT capabilities—IRS, the Census, FBI, the Department of Agriculture—and it has been a total nightmare. Total nightmare. And they just keep asking for billions here and billions there, and there is no end in sight. And certainly no progress has been made in being able to either set up an entire new system, integrate the old stuff into some of the new things they have done. And it is a bottomless pit.

Judge GIBBONS. Well, the money we ask you for is not for systems that are not functioning. Our request will enable us to move

to the next generation and to improve technology. The systems we have serve us very well. I am sure there are probably some things about our culture and our oversight of those systems that have enabled us to convert and develop IT programs successfully. I do not see the Judiciary as having those kinds of problems. We are moving forward, not trying to fix things we haven't gotten right in the first place.

Mrs. EMERSON. That is a breath of fresh air.

Director Duff, you all are comfortable at the administrative office that you have all the technical expertise necessary to sort of look forward?

Mr. DUFF. Yes. We have new leadership in the IT area at the AO that we are very excited about. And we are interacting well with the courts. We work closely with them to figure out what makes more sense to do locally as opposed to nationally and try to maintain efficiencies that way. And we delegate where it makes sense. Where it is more cost-efficient to have a national system, we do that. So it is really trying to affect that balance. I think we have made great strides in improving communication on that, and we are pretty proud of the way that is developing.

Mrs. EMERSON. Might you be willing to lend that person or those people to some of these other agencies? Seriously.

Mr. DUFF. I would be happy to talk with them.

Mrs. EMERSON. Thank you.

Mr. SERRANO. Thank you. I have one last question. And we have a series of votes coming up, so it will give us an opportunity to finish up.

NATURALIZATION CEREMONIES

Last December, the Office of the Ombudsman for Citizenship and Immigration Services at the Department of Homeland Security issued a report or recommendations on the conduct of naturalization ceremonies. In many areas Federal judges conduct these ceremonies and swear in new citizens, although ICE has the—Citizenship and Immigration Services has the authority to conduct citizenship ceremonies on its own if the courts prefer not to.

Having a judge preside adds to the importance of the day, and I think it also sends a message that there is nothing more honorable than the courts, and therefore when you get sworn in, that is what you are looking at.

While the report says that generally the Federal courts are very responsive to requests to make judges available for these ceremonies, it also found some problems. Among other issues the report notes that one district court refused to schedule additional ceremonies to accommodate the large number of applicants who had completed processing in the fall of 2008 and refused to allow the Immigration Services to administratively naturalize those applicants. As a result, 1,951 individuals had not received the oath in time to register to vote in the 2008 elections.

The report also cited other problems relating to scheduling payments of courts and other issues. While I realize that the Federal judges are quite busy, one would hope that they could make time for swearing in new citizens. That should be one of the most pleas-

ant of their duties. In fact, I tell you, I wish we had the ability to do that, because I would be at every ceremony in my district.

Mrs. EMERSON. Absolutely.

Mr. SERRANO. Do you get to swear them in?

Mrs. EMERSON. I get to be there and make a little speech, yes.

Mr. SERRANO. Okay, just wanted to check because we may have to recall a few.

I was saying I wish we could do what the judges do.

Mrs. EMERSON. There are some Members of Congress who are allowed to marry people, so if you are allowed to marry someone—

Mr. SERRANO. That is California, right?

Mrs. EMERSON. Yeah. You can do it on line, you can do an on-line application to allow us to do that.

Mr. SERRANO. Anyway, that should be one of the most pleasant duties was my last comment.

Are you aware of the Citizenship and Immigration Services report or of any issues with the conduct of these ceremonies? Can you tell us what steps the courts are taking to ensure that these ceremonies are available in a timely manner?

If neither of you are familiar with the issue I would appreciate it if you could get back to us with a response for the record.

And I want to emphasize that I realize that there is a lot of work going on, and we don't want to load up more work, but this is such an important thing to carry out. And immigration continues to be a very difficult issue. So when you get folks who go through the process and become citizens—I have been to a few of them, and it is just wonderful. No one is unhappy. It is like a graduation. Everybody is waving the flag. It is just wonderful.

I think if I was a judge I would want to get out of other work and go do the ceremonies.

Judge GIBBONS. I am itching to talk to you about this, because the Ombudsman and I do not see eye to eye on what the situation is in the Federal courts with respect to their eagerness to perform these ceremonies. Federal judges administered the oath to over 450,000 new citizens last year. In fact, I have never known a court that was not eager to do the ceremonies. Judges feel just as you described that they should feel.

I was in the district court for 19 years and I don't know any experience I have had as a judge that is more a lump-in-your-throat moment than those ceremonies in which I participated. We did a very large one during Law Week in May, and then we did other large ones throughout the year that were not quite as big as the May one, but over the years the numbers increased as well as the frequency.

And I think that judges in general feel that way. We are there for so many low points of people's lives. And what a joy to be there for this high point in a person's life that is such a powerful reminder to all of us of the promise of citizenship in our country.

I am confident that any delays or unwillingness to schedule a ceremony that the Ombudsman pointed out, are very isolated or the result of a lack of communication. I am just not sure. The Ombudsman Report seemed to reflect a preference or a lack of understanding as to why there should be a preference for the formality and the dignity and the specialness of a court proceeding. But the

courts do not feel that way. I believe our record of holding these ceremonies is a very good one.

There are many stories of judges who make a house call or who work with individuals to administer the oath in chambers if there is a particular deadline, in addition to all of these larger proceedings we do.

And so the Ombudsman and I do not have the same view of the situation. And I fully share your take on how important this is and how eager the judges ought to be, to be participants in this process.

The thing about the payments, I don't understand either. The funds don't go to the individual courts. There is an administrative processing fee for the courts to handle all the paperwork. It goes to the general operating fund. And I don't know why a court—no court would have a motive with respect to a payment to delay or not hold a proceeding or anything of that sort.

Mr. SERRANO. Well, Your Honor, your statement is pretty strong, and I know that I can feel the passion in your refusal to accept the report's allegations of findings. Is there a process by which you get to speak to the Ombudsman and discuss the findings?

Judge GIBBONS. I am not sure what the process is. We will get back to you if neither of us knows.

[CLERK'S NOTE.—Subsequent to the hearing, the Judiciary provided the following additional information:]

There is no formal process whereby the Judiciary can refute the findings of the ICE Ombudsman report about naturalization ceremonies. The Judiciary did not get an opportunity to review or comment on the December 16, 2008 report issued by the ICE Ombudsman prior to its release. This may be due to the fact that the Ombudsman has no oversight authority over the Judiciary, and his role as defined by statute and stated on his website is to “assist individuals and employers in resolving problems with USCIS” and “identify areas in which individuals and employers have problems in dealing with USCIS.” Unlike the GAO, the Ombudsman does not provide his report for comment prior to its release and does not include in his report responses relating to issues raised by USCIS, nor does he include response letters in an appendix to the report. The USCIS, which is under the Ombudsman’s oversight, is provided an opportunity to respond to the Ombudsman only after a report is published. The agency’s response is then posted on the Ombudsman’s web site in an area of the site separate from the report.

The Ombudsman did contact the Administrative Office of the United States Courts in October of 2008 with a request to meet with staff regarding the Judiciary’s role in the naturalization process. Staff did meet with the Ombudsman and his staff on October 16, 2008. The Ombudsman’s office apparently did not understand why the judges and courts would take time out of their busy schedules to conduct these ceremonies. The only reason they could see for courts holding judicial ceremonies was that individual courts wanted to profit from the approximately \$14.00 per oath allotted to the Judiciary. The AOUSC staff made them aware of the fact that the individual courts do not collect the fees nor do they get any monetary benefit from conducting the ceremonies. Fees are transmitted directly to the AOUSC and deposited into the Judiciary’s general operating funds. Unfortunately, however, the Ombudsman’s incorrect view as to a court’s profit motive in conducting ceremonies was included in the December 16, 2008 report and probably provided the report with more media attention than it otherwise would have received.

The Ombudsman also related some anecdotal information on problems with court ceremonies, but because he would not provide detailed information on the courts involved, the information could not be verified. Prior to the report the Ombudsman’s staff had observed about a half dozen ceremonies out of the thousands held each year by the courts and also spoke with USCIS staff only to provide these examples. In the few instances in which some detail was provided, they held the AOUSC to confidentiality and asked that the courts not be contacted. To the AOUSC’s knowledge, none of the incidents reported were the result of complaints raised by individuals or employers. These incidents were included in the December 16, 2008 report even though the Ombudsman admittedly did not make any effort to talk with personnel from the courts involved or allow us to do so.

Since the October meeting with the Ombudsman, AOUSC staff have met twice with representatives of the USCIS to discuss the Ombudsman's comments. The first meeting, held on October 24, 2008, was held at the request of USCIS. The representatives, including the Chief of Field Operations, commended the courts for providing extensive assistance in conducting the record-setting number of naturalizations in 2008. They indicated that the number could not have been achieved without the courts' participation. The USCIS representatives, after being briefed on the upcoming report by the Ombudsman, were concerned that the his report might not provide a fair picture of the court's conduct of naturalization ceremonies. They were planning to correct the misimpressions in the Ombudsman's report through their formal response and offered to include information provided by the courts. The AOUSC has provided comments to the USCIS for inclusion in their response which has not yet been posted.

The AOUSC and the USCIS, have been working together on resolving or addressing any legitimate issues raised in the Ombudsman's report. The AOUSC has already sent out a memo addressing funding for ceremonies conducted by the courts at a location other than the courthouse. There had been some confusion on the part of both the USCIS and court personnel as to the court's obligations to fund the rental and other costs related to these ceremonies and the memo, which was also provided to the USCIS for distribution to their field offices, is intended to clear up that confusion. Virtually all of the other issues raised in the report are a result of the Ombudsman's office not being aware of all the applicable facts and information relating to the anecdotes discussed in the report, some of which occurred over six years ago.

The Ombudsman's office, since the publication of the December 16, 2008 report, has sent two letters to the AOUSC offering to assist the courts in setting up procedures for the conduct of judicial ceremonies, a task which appears to be beyond the scope of their statutory responsibilities. The letters indicate that the Ombudsman's staff will continue to monitor court ceremonies and include their observations in a June 2009 report to Congress. There was no indication in the letters that the courts will be provided with an opportunity to verify and/or address comments on court conduct of ceremonies contained in the June report.

The judiciary is always eager to improve its procedures but, given the facts discussed above, the AOUSC has chosen to continue to work directly with the USCIS on any issues arising from the conduct of naturalization ceremonies and the two agencies have agreed to meet on a regular basis. The vast majority of judges are eager to participate in naturalization proceedings. They believe that a courthouse naturalization ceremony with a judge presiding provides a solemnity to a very significant event in the new citizen's life that he or she can share with family and friends, and leaves those attending the ceremony with a broader and more positive view of the role of courts and the justice system in the lives of all our citizens. As one naturalized citizen wrote after reading an article about the effort in New York City to end court ceremonies, "People come to America with 'Great Expectations.' Becoming a citizen is a great time in one's life and the Judicial experience is one you never forget."

Mr. DUFF. Right. Well, we were surprised with some of the findings or allegations by the Ombudsman. But just to support what Judge Gibbons has said, we encourage our judges to participate in these ceremonies for all the reasons she articulated so well.

Just to put in some perspective what the Ombudsman's criticisms were, one of the criticisms was that a ceremony was delayed for about an hour. Well, we looked into that. The reason it was delayed was because the judge wanted the Member of Congress to be there for the ceremony. The Member wasn't there.

Mr. SERRANO. Hey, traffic in the Bronx is not that easy.

Mr. DUFF. But we encourage these sorts of ceremonies. And, quite candidly, it is an opportunity for our judges to interact with Members of Congress. We are always here with our hands out, seeking money from you. We always want something from you. We are looking for ways to work with you on other matters of mutual interest. And this is one we have highlighted.

In our Judicial Conference, in our meetings with judges, we encourage them to reach out to their Members of Congress, invite them to attend these ceremonies. It is a great opportunity, as Representative Emerson has indicated, to participate in and be out front publicly on a good event. So I assure you that this is something that we feel strongly about, too, and want it to be everything Judge Gibbons has described.

Mr. SERRANO. On a lighter note, I remember, Mrs. Emerson, that I went to a ceremony. On the way out, I said to one person, "Congratulations. How are things now that you are a citizen?" She said, "Well, my taxes are too high." And I said, "Do you know something? You are going to be a great American, you have got all the qualifications."

Anything else?

Mrs. EMERSON. Thanks Mr. Chairman. I have got a couple of questions I would like to submit for the record.

QUESTIONS FOR THE RECORD

The Judiciary

**The Honorable Jose E. Serrano, Chairman
Subcommittee on Financial Services and General Government
March 19, 2009**

1. Please provide a table showing, for each account in the Judiciary budget (including the Judiciary Information Technology Fund), for each of fiscal years 2006 through 2009 and for the fiscal year 2010 budget request, the actual or estimated amount carried over from the previous fiscal year, the amount appropriated, the amount becoming available from fee income or other non-appropriated sources, the amount obligated, and the amount carried over into the next fiscal year. For carryover, please separate the totals into amounts from discretionary appropriations and amounts from fee income and other non-appropriated sources.

Please refer to **Attachment 1**.

Attachment 1

JUDICIARY CARRYOVER BALANCES

	FY 2006										Actual Obligations
	Available Appropriation	Approp. Chgd. from Prior Years	Fee Carry-forward from Prior Years	Planned Fee Collections	EPA Revenue	PY Recoveries/ Other	JTF Carry-forward	Financial Plan Resources	Encumbered Carry-forward	Total Resources	
Supreme Court											
Salaries and Expenses	60,143	0	0	0	0	0	0	60,143	0	60,143	57,829
Building and Grounds	5,568	9,448	0	0	0	0	0	15,016	0	15,016	10,597
Total Supreme Court	65,711	9,448	0	0	0	0	0	75,159	0	75,159	68,426
Court of Appeals for the Federal Circuit											
	23,783	0	0	0	0	0	0	23,783	0	23,783	23,780
Court of International Trade											
	15,342	0	0	0	0	0	313	15,655	0	15,655	14,968
Courts of Appeals, District Courts and Other Judicial Services											
Salaries and Expenses (incl Vaccine)	4,312,190	0	99,934	244,608	36,807	28,000	9,625	4,731,164	102,264	4,833,428	4,538,832
Defender Services	709,830	17,644	0	0	0	83	0	727,557	0	727,557	732,947
Fees of Jurors and Commissioners	60,705	2,264	0	0	0	0	0	62,969	0	62,969	60,951
Court Security	368,280	0	0	0	0	0	0	368,280	1,987	370,267	360,879
Subtotal (CADCQS)	5,451,005	19,908	99,934	244,608	36,807	28,083	9,625	5,889,970	104,251	5,994,221	5,683,609
Administrative Office of the U.S. Courts											
	69,859	0	4,971	12,874	0	910	400	87,814	1,000	88,814	87,435
Federal Judicial Center											
	22,127	0	0	0	0	422	0	22,549	0	22,549	22,450
Payment to Judicial Retirement Funds											
	40,600	0	0	0	0	0	0	40,600	0	40,600	40,600
Sentencing Commission											
	14,256	585	0	0	0	0	1,901	16,742	0	16,742	14,184
Total Judiciary	5,702,383	29,941	104,005	257,482	36,807	29,415	12,239	6,172,272	105,251	6,277,523	5,955,462

JUDICIARY CARRYOVER BALANCES

	FY 2007										Actual Obligations
	Available Appropriation	Approp. Clvd from Prior Years	Fee Carryforward from Prior Years	Planned Fee Collections	EPA Revenue	PV Recoveries/Other	JITF Carryforward	Financial Plan Resources	Encumbered Carryforward	Total Resources	
Supreme Court											
Salaries and Expenses	62,576	0	0	0	0	0	0	62,576	0	62,576	62,378
Building and Grounds	11,427	11,446	0	0	0	0	0	23,275	0	23,275	11,565
Total, Supreme Court	74,003	11,446	0	0	0	0	0	85,851	0	85,851	73,943
Court of Appeals for the Federal Circuit											
	25,311	0	0	0	0	0	0	25,311	0	25,311	25,309
Court of International Trade											
	15,825	0	0	0	0	0	357	16,182	0	16,182	15,759
Courts of Appeals, District Courts and Other Judicial Services											
Salaries and Expenses (incl Vaccine)	4,480,521	0	116,227	145,000	41,372	7,500	24,210	4,814,836	92,228	4,907,064	4,701,451
Defender Services	776,283	9,599	0	0	0	223	0	786,015	0	786,015	773,713
Fees of Jurors and Commissioners	60,946	2,619	0	0	0	0	0	62,964	0	62,964	62,921
Court Security	378,663	10,590	0	0	0	0	0	389,253	1,722	390,975	385,044
Subtotal (CACCOJS)	5,696,412	22,118	116,227	145,000	41,372	7,723	24,210	6,053,062	93,950	6,147,012	5,923,119
Administrative Office of the U.S. Courts											
	72,377	0	8,870	7,632	0	0	726	89,605	906	90,511	88,867
Federal Judicial Center											
	22,874	350	0	0	0	389	0	23,613	0	23,613	23,597
Payment to Judicial Retirement Funds											
	58,309	0	0	0	0	0	0	58,309	0	58,309	58,300
Sentencing Commission											
	14,601	585	0	0	0	0	1,000	16,186	0	16,186	14,478
Total Judiciary	5,979,703	34,901	125,097	157,632	41,372	8,112	26,293	6,368,110	93,950	6,462,060	6,223,172

* In fiscal year 2007, \$20 million in fee balances were not assumed as part of total resources in the S&E plan.

Attachment I

JUDICIARY CARRYOVER BALANCES

	FY 2008										
	Available Appropriation	Approp. Chgd from Prior Years	Fee Carryforward from Prior Years	Planned Fee Collections	EPA Revenue	PV Recoveries/ Other	JTTF Carryforward	Financial Plan Resources	Encumbered Carryforward	Total Resources	Actual Obligations
Supreme Court											
Salaries and Expenses	66,526	0	0	0	0	0	0	66,526	0	66,526	64,256
Building and Grounds	12,201	5,463	0	0	0	0	0	17,664	0	17,664	9,958
Total, Supreme Court	78,727	5,463	0	0	0	0	0	84,190	0	84,190	74,214
Court of Appeals for the Federal Circuit	27,072	0	0	0	0	0	0	27,072	0	27,072	27,053
Court of International Trade	16,632	0	0	0	0	0	410	17,042	0	17,042	16,574
Courts of Appeals, District Courts and Other Judicial Services											
Salaries and Expenses (incl Vaccine)	4,623,361	0	206,984	143,233	67,662	0	46,971	5,088,211	27,270	5,115,481	4,925,466
Defender Services	846,101	11,302	0	0	0	0	0	857,403	1,000	858,403	811,310
Fees of Jurors and Commissioners	63,081	43	0	0	0	0	0	63,124	0	63,124	60,720
Court Security	410,000	7,242	0	0	0	0	0	417,242	2,360	419,502	409,401
Subtotal (CADCOIS)	5,942,543	18,587	206,984	143,233	67,662	0	46,971	6,425,980	30,530	6,456,510	6,206,897
Administrative Office of the U.S. Courts	76,036	0	6,463	10,090	0	0	1,380	93,969	0	93,969	92,694
Federal Judicial Center	24,187	0	0	0	0	406	0	24,593	0	24,593	24,578
Payment to Judicial Retirement Funds	65,400	0	0	0	0	0	0	65,400	0	65,400	65,400
Sentencing Commission	15,477	585	0	0	0	0	500	16,562	0	16,562	15,365
Total Judiciary	6,246,074	24,635	213,447	153,323	67,662	406	49,261	6,754,808	30,530	6,785,338	6,522,775

* In fiscal year 2008, \$60 million in fee balances were not assumed as part of total resources in the S&E plan.

JUDICIARY CARRYOVER BALANCES

	Available Appropriation	FY 2009							Total Resources	Projected Obligations
		Approp. Cln'd from Prior Years	Fee Carry forward from Prior Years	Planned Fee Collections	EPA Revenue	PY Recoveries/ Other	JTF Carry forward	Financial Plan Resources		
Supreme Court										
Salaries and Expenses	69,777	0	0	0	0	0	0	69,777	0	69,777
Building and Grounds	18,447	7,796	0	0	0	0	0	26,153	0	17,577
Total Supreme Court	88,224	7,796	0	0	0	0	0	95,930	0	87,354
Court of Appeals for the Federal Circuit										
	30,384	0	0	0	46	0	0	30,430	0	30,430
Court of International Trade										
	19,605	0	0	0	0	0	683	20,288	0	20,770
Courts of Appeals, District Courts and Other Judicial Services										
Salaries and Expenses (incl Vaccine)	4,805,622	0	145,507	222,749	79,021	0	26,876	5,279,775	52,415	5,332,190
Defender Services	849,400	48,811	0	0	0	0	0	898,211	0	897,887
Fees of Jurors and Commissioners	62,266	2,484	0	0	0	0	0	64,610	0	62,546
Court Security	428,858	9,544	0	0	0	0	0	438,402	4,981	443,383
Subtotal (CACQS)	6,146,086	60,759	145,507	222,749	79,021	0	26,876	6,686,999	52,415	6,739,405
Administrative Office of the U.S. Courts										
	79,649	0	9,127	11,724	0	31	1,893	101,824	0	101,824
Federal Judicial Center										
	25,725	0	0	0	0	701	0	26,426	0	26,426
Payment to Judicial Retirement Funds										
	76,140	0	0	0	0	0	0	76,140	0	76,140
Sentencing Commission										
	16,225	597	0	0	0	0	2,151	18,973	0	18,973
Total Judiciary	6,481,438	69,062	154,634	234,473	79,067	732	31,603	7,051,009	52,415	7,095,674

* The fiscal year 2009 projected obligations match the planned obligation amounts identified in the fiscal year 2009 Hill Plan.

JUDICIARY CARRYOVER BALANCES

	Available Appropriation	FY 2018 (Original Request)				JTF Carry Forward	Requested Resources	Projected Obligations
		Approp. Fund from Prior Years	Fee Carry Forward from Prior Years	Planned Fee Collections	EPA Revenue	PY Recoveries/Other		
Supreme Court								
Salaries and Expenses	74,740	0	0	0	0	0	74,740	74,740
Building and Grounds	14,568	4,665	0	0	0	0	19,233	19,233
Total, Supreme Court	89,308	4,665	0	0	0	0	93,973	93,973
Court of Appeals for the Federal Circuit								
	36,981	0	0	0	67	0	37,048	37,048
Court of International Trade								
	21,517	0	0	0	0	0	21,727	21,727
Courts of Appeals, District Courts and Other Judicial Services								
Salaries and Expenses (incl Vaccine)	5,167,680	0	90,000	266,136	75,611	0	5,619,427	5,619,427
Defender Services	992,646	10,000	0	0	0	0	992,646	992,646
Fees of Jurors and Commissioners	63,401	0	0	0	0	0	63,401	63,401
Court Security	463,642	0	0	0	0	0	463,642	463,642
Subtotal (CACDOJS)	6,677,369	10,000	90,000	266,136	75,611	0	7,139,116	7,139,116
Administrative Office of the U.S. Courts								
	83,963	0	5,789	14,007	0	0	103,759	103,759
Federal Judicial Center								
	27,486	0	0	0	0	519	28,005	28,005
Payment to Judicial Retirement Funds								
	82,374	0	0	0	0	0	82,374	82,374
Sentencing Commission								
	17,056	585	0	0	0	0	19,292	19,292
Total Judiciary	7,036,054	15,250	95,789	280,143	75,678	519	7,525,294	7,525,294

2. Please provide a table showing, for each account in the Judiciary budget, for each of fiscal years 2006 through 2009 and for the fiscal year 2010 budget request, the actual or estimated number of full-time equivalent employees.

THE JUDICIARY

Summary of FTE for Fiscal Years 2006 – 2010

Appropriation	FY 2006 Actual	FY 2007 Actual	FY 2008 Actual	FY 2009 Estimate	FY 2010 Request
Supreme Court					
Salaries and Expenses	470	470	470	480	485
Building and Grounds	34	35	35	43	46
Court of Appeals for the Federal Circuit	121	134	135	147	160
Court of International Trade	75	78	79	80	80
Court of Appeals, District Courts, and Other Judicial Services:					
Salaries and Expenses	28,723	28,806	29,172	29,529	30,080
Defender Services	2,270	2,333	2,439	2,623	2,736
Fees of Jurors & Commissioners	0	0	0	0	0
Court Security	54	40	53	62	70
Subtotal, Courts of Appeals, District Courts and Other Judicial Services	31,047	31,179	31,664	32,214	32,886
Administrative Office of the United States Courts	648	637	617	639	639
Federal Judicial Center	126	129	132	134	138
Judicial Retirement Funds	0	0	0	0	0
United States Sentencing Commission	105	99	97	105	105
Total, Judiciary	32,626	32,761	33,229	33,842	34,539

3. What would be the effect on the Judiciary's budget request if the average pay raise for Federal civilian employees was set at the 2.0 percent level used in the President's fiscal year 2010 budget, rather than at the level used in preparing the Judiciary's budget request? Please provide estimates of the effect on each account in the Judiciary budget.

The Judiciary's original appropriation request of \$7,036 million assumed a pay adjustment of 4.2 percent in fiscal year 2010. A pay adjustment of 2.0 percent would equate to a reduction of \$70 million, lowering the request to \$6,966 million. The following table shows the estimated impact on each account in the Judiciary budget.

THE JUDICIARY - JAN 2010 PAY INCREASE ANALYSIS
Summary of Appropriation Request (\$000)

	FY 2010 Original Request (4.2% Pay Adjustment)	Reduction for Revised Pay Assumption	FY 2010 Revised Estimate (2.0% Pay Adjustment)
Supreme Court			
Salaries and Expenses	74,740	(\$913)	73,827
Buildings and Grounds	14,568	(\$43)	14,525
Total, Supreme Court	89,308	(956)	88,352
Court of Appeals for the Federal Circuit	36,981	(\$335)	36,646
Court of International Trade	21,517	(\$128)	21,389
Courts of Appeals, District Courts and Other Judicial Services			
Salaries and Expenses - Direct	5,162,252	(\$57,954)	5,104,298
Vaccine Injury Fund	5,428	-	5,428
Total, Salaries and Expenses	5,167,680	(\$57,954)	5,109,726
Defender Services 1/	982,646	(\$8,436)	974,210
Fees of Jurors and Commissioners	63,401	-	63,401
Court Security	463,642	(\$84)	463,558
Subtotal (CADCOJS)	6,677,369	(66,474)	6,610,895
Administrative Office of the U.S. Courts	83,963	(\$1,391)	82,572
Federal Judicial Center	27,486	(\$280)	27,206
Payment to Judicial Retirement Funds	82,374	-	82,374
Sentencing Commission	17,056	(\$168)	16,888
Total Appropriated	7,036,054	(69,732)	6,966,322

1/ For the Defender Services account, a revised pay assumption reduces the requested panel attorney hourly rate adjustments for fiscal year 2010 as follows: The capital rate would increase from \$175 to \$177 (instead of to \$181) and the non-capital hourly rate would increase from \$110 to \$111 (instead of to \$114). The requested program increase for the non-capital hourly rate would still be a \$28 dollar increase to the hourly rate but from \$111 to \$139 per hour (instead of from \$114 to \$142 per hour).

4. Please explain the sources of funds deposited into the Judiciary Information Technology Fund and the uses to which these funds are put.

SOURCES OF FUNDS

Each fiscal year, the IT requirements of the courts are financed via the JITF from a variety of sources:

- Deposits from the court's Salaries and Expenses account;
- Receipts from the Electronic Public Access (EPA) program;
- Unobligated balances in the fund from prior years;
- Proceeds from the sale of excess IT equipment;
- Court reprogrammings into the Fund from non-IT allotments that are reprogrammed locally for IT initiatives in accordance with the budget decentralization program; and
- Voluntary deposits from non-mandatory Judiciary users of the Fund (such as the Court of International Trade, the U.S. Sentencing Commission, the Administrative Office of the U.S. Courts, and the Court of Appeals of the Federal Circuit).

Deposits from the Salaries and Expenses account: The majority of the financing in the JITF originates from new deposits from the Salaries and Expenses account. The source of the Salaries and Expenses funds is annual appropriations. The amount of appropriated funds to be deposited is calculated based on current estimates of total obligation requirements offset by available non-appropriated sources of funds. As non-appropriated sources of funding increase, the amount of deposited appropriated funds necessary to fund obligation requirements decreases. Conversely, if non-appropriated funding levels decrease, then additional appropriated funds may be required in order to ensure that funds are available to meet critical IT requirements.

EPA Receipts: Non-appropriated fund sources include fee collections from providing the public with electronic access to court records and unobligated carry forward balances from prior years. Receipts are collected through the Judiciary's Electronic Public Access Program (EPA), which encompasses systems and services that provide the public with electronic centralized billing, registration, and technical support services through the Public Access to Court Records (PACER) Service Center. The program provides internet access to data from case files in all court types, in accordance with policies set by the Judicial Conference and congressional directives.

Unobligated balances: Unobligated balances from prior years include "Savings and Slippages." Balances categorized as "savings" are the result of reduced requirements, lower than anticipated costs, and increased efficiencies. The Judiciary uses "savings" balances as a general offset to the appropriations deposit in the JITF. The second source of unobligated balances in

the JITF is categorized as "slippage." During the course of the fiscal year, information technology requirements may "slip" from one year to the next due to delays in awarding contracts or obtaining necessary equipment and infrastructure, technology changes, or continued analyses of alternatives. While "slippage" becomes part of the overall unobligated balance in the JITF, the Judiciary recognizes that the planned obligation of funds for the original purpose still exists - it has merely been delayed. As a result, total obligation requirement in the upcoming budget year may increase due to slippage; however, because the funding associated with the slippage is carried forward from the previous year and designated for the same purpose in the current year, there is no net increase to appropriation requirements.

Proceeds from the sale of excess IT equipment: Proceeds from the courts' sale of excess IT equipment which are deposited into the Fund are minimal and average less than \$100,000 per year.

Court reprogrammings into the Fund: Court reprogrammings from non-IT funding may be reprogrammed locally into the Fund in support of the judiciary requirement that all IT-related expenses must be made in the Fund.

Voluntary deposits from non-mandatory Judiciary users: The voluntary deposit into the Fund from non-mandatory users allows the non-mandatory users to deposit the IT funds for use in the current year or to carry forward for planned uses in the next fiscal year.

USES OF THE FUNDS

Funding for the JITF Salaries and Expenses obligations supports eleven distinct IT program components that are indicative of the cost drivers in the JITF program. These requirements by major initiative support the IT systems that provide judges and staff with the tools they need to perform their day-to-day work. The eleven program components are described below:

- Court Administration and Case Management Systems: This category encompasses systems that assist courts in managing cases and case files for appellate, district and bankruptcy courts (the Electronic Case Files/Case Management system) and the Central Violations Bureau. Other systems also include juror qualification, management, and payment; the management and administration of library functions (e.g., acquisitions, cataloging, serial control); and the operations and maintenance for the Central Violations Bureau which provides case management and financial information for petty offense and misdemeanor cases initiated by violation notices.
- Judicial Statistics and Reporting Systems: This category includes systems to support the operations and maintenance and ongoing systems development for gathering and reporting statistics in the Judiciary; financial disclosure reports by judges and judiciary employees (for completing financial reports required by the Ethics in Government Act of 1978); inter-circuit assignments for courts of appeals and district courts; bankruptcy administrator management and reporting to manage cases, oversee the trustees' activity,

and provide reports to federal judges; the law clerk hiring process; and electronic document capabilities for the federal rule-making process.

- Courtroom Technology Program: This program provides for the installation and maintenance of courtroom technologies to improve the quality and efficiency of courtroom proceedings. The Judiciary continues its program to equip courtrooms with a variety of technologies to improve the quality and efficiency of certain aspects of courtroom proceedings. These technologies include video evidence presentation systems, video conferencing systems, and electronic methods of taking the record. The Judicial Conference has endorsed the use of such technologies in the courtroom as they can improve trial time, lower litigation costs, facilitate fact-finding, enhance the understanding of information, and improve access to court proceedings.
 - Court IT Allotments: IT allotments are provided to the courts each fiscal year in four parts: (1) an IT infrastructure allotment, based on an industry-standard funding model, for maintenance and cyclical replacement of desktop PCs, local-area networks, and related systems; (2) a historical-based allotment for IT training, phone bills, and other-related operating expenses; (3) an allotment for the courtroom technology formula which provides funding at the local level for continued infrastructure of aging courtroom technology systems; and (4) probation and pretrial services offices receive an IT law enforcement allotment for program specific requirements such as firearms simulators, forensics hardware and software, and global positioning system tools.
 - Probation/Pretrial Services Management Systems: This program provides probation and pretrial services personnel case management and decision support tools as well as tools to access critical case information while working in the field. Support is also provided for storage and sharing of electronic documents, collection, analysis, and reporting of client data, and the IT needs of the Federal Law Enforcement Training Center.
 - Financial Systems: In addition to the Judiciary's financial accounting system, this program includes systems to support the local court budgeting process, the payment for private court-appointed counsel and expert services, tracking and monitoring criminal debt imposed by the court, the handling of cash receipts, reporting of court payroll information, and the management of travel expenses. The Judiciary is moving to a single integrated accounting system that will allow timely access to data to support the federal accounting standards including the e-government requirement for daily reporting to the Department of Treasury, and provide enhanced reporting capability.
 - Human Resources Systems: This program encompasses systems for personnel, payroll, and retirement related services, judges' retirement, fair employment practices reporting, and integration of all human resources-related items as well as efforts to reduce travel-based training. It also includes equipment to produce educational news programming for the judiciary, the public, and Congress.
- Management Information Systems: This program component includes a collection of systems and activities to support the procurement process, the

Judiciary's national web sites, collection of survey information, the national records management program, and the *Guide to Judiciary Policies and Procedures (Guide)*. The *Guide* is the official medium by which guidance and information is provided to the courts to support of its day-to-day operations. This program component also includes systems to manage facilities projects and to support planning and decision-making with staffing, financial, and workload data.

These management information systems enhance productivity and ensure adherence to policies and procedures. For example, the Judiciary Facilities Asset and Construction Tracking System enables analysis of rent reports from GSA to project related schedules and cost information. Access to this information assists the judiciary with its rent validation efforts. In addition, this category includes the *Guide* enhancement project to automate all 11 volumes and provide enhanced search capability.

- Infrastructure and Collaboration Tools: This program component includes funds managed centrally on behalf of the courts to maintain the infrastructure for the national IT program. The Infrastructure and Collaboration Tools category includes national software licenses; maintenance and replacement of servers and help desk services; e-mail messaging; IT security and national gateways; the judiciary's data center; IT project management; information systems architecture (and assessment of new technologies); local court grants for technology innovation; portal technology; infrastructure for identity management services, and the Court Operations Support Center.
- Telecommunications Program: This program provides support for voice and data transmissions services and telecommunications equipment for new buildings. (Funds for local, long-distance, and cellular service, and telephone system maintenance for the courts are included in *Court IT Allotments*.) The Judiciary's communications program allows the Judiciary to maintain communications services for the appellate, district, and bankruptcy courts and for probation and pretrial services offices and to procure communications equipment for new courthouses and for courthouses undergoing major repairs and alteration.
- Court Support Program: This program funds staff that provide IT development, management, and maintenance services to the courts. These staff provide IT policy and planning guidance, architecture and infrastructure support, security services, development, testing, and implementation of national IT applications, IT training and other administrative and IT support services on behalf of the courts.

The Judiciary has made a significant investment in information technology in recent years. This investment has created efficiencies by automating labor-intensive work processes and effecting cost savings and offsets in areas such as processing court filings, jury management, financial systems, printing, postage, personnel, space, travel, and training. On-going project and application development in the judiciary includes court administration/case management systems for appellate, district, and bankruptcy courts; judicial statistical and reporting systems; a courtroom technology program to improve the quality and efficiency of proceedings; court

allotments; probation/pretrial services management systems; financial systems for the courts; human resources systems; and management information systems.

If the requested amount is not provided, continued development and implementation of these critical projects would be affected. In addition, support for operating and maintaining the Judiciary's existing and newly installed information systems could be hindered, including support to the Judiciary Data Center, which provides centralized mainframe processing support to the courts for some personnel, payroll, financial, and statistical applications; infrastructure and collaboration tools; telecommunications program; and court support reimbursable programs.

5. What user fees are currently charged for obtaining court documents electronically through the PACER system? How much income have those fees generated during each of fiscal years 2006 through 2008 and how much income are they estimated to generate in fiscal years 2009 and 2010? What is the basis of computing those fees; in particular, what costs are they intended to recover?

Fees currently being charged for obtaining documents electronically through PACER are as follows:

- For electronic access to court data via a federal Judiciary Internet site: **eight cents per page**, with the total for any document, docket sheet, or case-specific report not to exceed \$2.40, the fee for thirty pages. However, consistent with Judicial Conference policy, courts may, upon a showing of cause, exempt indigents, bankruptcy case trustees, individual researchers associated with educational institutions, courts, section 501(c)(3) not-for-profit organizations, court appointed pro bono attorneys, and pro bono ADR neutrals from payment of these fees. Courts must find that parties from the classes of persons or entities listed above seeking exemption have demonstrated that an exemption is necessary in order to avoid unreasonable burdens and to promote public access to information. Exemptions may be granted for a definite period of time and may be revoked at the discretion of the court granting the exemption.
- For printing copies of any record or document accessed electronically at a public terminal in the courthouse: **ten cents per page**. This fee shall apply to services rendered on behalf of the United States if the record requested is remotely available through electronic access.

In fiscal year 2006 and 2007 respectively, receipts from PACER fees generated \$62.3 million and \$65.2 million. In fiscal year 2008, receipts from PACER fees increased to \$76.8 million; 17.8 percent above fiscal year 2007. Receipts for PACER fees are anticipated to increase to \$87.1 million in fiscal year 2009 (13.3 percent above fiscal year 2008) and \$94.0 million in fiscal year 2010 (8.0 percent above fiscal year 2009).

The basis for computing PACER fees has evolved over the past 20 years. In 1988, the Judiciary sought funding through the appropriations process to provide electronic public access services but was specifically directed by Congress to fund electronic public access services through the collection of user fees. As a result, the electronic public access program relies exclusively on fee revenue. In 1991, an initial fee of \$1.00 per minute for access to electronic information, via a dial-up bulletin board service, was set for the district and bankruptcy courts. Over the next five years, the fee was gradually reduced to \$0.60 per minute. The revenue generated from these fees was used exclusively to fund the full range of Electronic Public Access services, including PACER. Fee revenue also provided each court with necessary hardware and software to support public access services. This included a personal computer for free public access at the front counter of all offices with ten or more staff, more than 700 regular telephone lines and more than 200 toll-free telephone lines.

In 1997, the Judiciary addressed three issues pertaining to providing electronic public access to court information via the Internet: 1) the establishment of an appropriate fee for Internet access to court electronic records; 2) the types of information for which a fee should be assessed; and 3) the technical approach by which PACER information should be provided over the Internet.

In migrating to an Internet-based public access service, the Judiciary calculated the costs of offering both Internet and non-Internet access as long as necessary, with substantial software and telecommunications costs to be incurred for providing both types of service. The Judiciary examined four possible billing options: 1) a time-based fee which would simulate login time and assess the \$0.60 per minute fee; 2) a per-page fee which would assess a fee based on the number of pages of information received by the user; 3) a search-based fee which would assess a flat-rate fee for each search initiated and any data retrieved; and 4) a per byte fee which would assess a fee based on the number of character of information retrieved. With a focus on the fairest, most easily understood and most consistent method for charging, the Judiciary adopted the per-page fee option. This was found to be the simplest and most effective method for charging for public access via the Internet. The \$0.07 per page electronic access fee was calculated to produce comparable fees for large users in both the Internet and dial-up applications and thus maintain the then current public access revenue level while introducing new technologies to expand public accessibility of the PACER information.

In 2003, Congress expanded the permitted uses of EPA funds to include the operational costs for the case management/electronic case files (CM/ECF) system. In order to provide sufficient revenue to fully fund currently identified case management/electronic case files system costs, the \$0.07 per page electronic access fee was increased to \$0.08 per page. The fees paid by PACER users are used solely to fund Judiciary electronic public access programs and operations. Funds are used to pay the expenses of the public access program, including telecommunications, replication, and archiving expenses, as well as the Case Management/Electronic Case Files applications, and electronic bankruptcy noticing, which in 2008 transmitted more than 20 million bankruptcy notices. As PACER usage has increased greatly in recent years, so have the expenses associated with continually expanding network capacity and improving the systems architecture to keep up with the demand. In accordance with Congressional direction, fee revenue is also used to support other public access programs, including Violent Crime Control Act Victim Notification, on-line juror services, and the courtroom technology program.

Fee revenue allows the Judiciary to pursue new technologies for providing public access, develop prototype programs to test the feasibility of new public access technologies, and develop enhancements to existing systems. By authorizing the fee, Congress has provided the Judiciary with revenue that is dedicated solely to promoting and enhancing public access. These services could not be provided without paying fees. The Judiciary is committed to charging the minimum fee possible simply to recover the cost of the service. These fees are only used for public access and are not subject to being redirected for other purposes.

6. I understand that there had been pilot projects underway to make PACER access available to the public free of charge at certain libraries, but that those projects were terminated last Fall. Is my understanding correct? If so, why were the projects terminated, and are there any plans to resume them?

At its September 2007 session, the Judicial Conference of the United States endorsed a pilot project to provide fee-free PACER access at fifteen Federal Depository Libraries (FDLs). The purpose of the pilot program was to determine whether free access at libraries would reach a segment of the public that may have a legitimate desire or need for access to court information, but would be unlikely to go to the courthouse or establish a PACER account. This joint pilot between the Government Printing Office (GPO) and the Administrative Office of the U.S. Courts was not to exceed two years in length.

The GPO sought volunteers to participate in the pilot from among its 1265 FDLs. In consultation with the GPO, the Administrative Office selected seventeen of the forty-nine volunteering FDLs to participate in the pilot. From October 2007 through September 2008, the seventeen PACER pilot FDLs promoted the service to the public and to their primary clientele. Examples of promotion activities included notices on library Web pages, postings to electronic discussion lists, handouts at the reference desk, presentations to college classes and bar association meetings, postings to blogs, cataloging record in OPAC¹, press releases, signage within the library, and newspaper articles.

There were three incidents of excessive PACER use during this pilot. The first two incidents were addressed by reaffirming the procedures that restricted the PACER account use to library-owned computers. The last incident, however, led to the pilot being suspended pending an evaluation of usage and an investigation of potential misuse. Upon conclusion of the investigation, the Judiciary will determine whether to resume the pilot with the appropriate safeguards in place.

Prior to its suspension, the pilot was underway for eleven months. The data collected during that time suggests that the target population, a segment of the public that would be unlikely to go to the courthouse or establish a PACER account, was not reached as anticipated. Although the pilot was initially well publicized, some of the libraries did not followup with the desired level of public outreach. The Administrative Office will work with the Government Printing Office to determine whether free access to PACER can be integrated into a larger public outreach program by the FDLs.

The first incident occurred when all the public access computers at a participating library were in use and library staff agreed to log into PACER on a patron's laptop. At this particular FDL, there are several free (non-DCN) wireless internet connections that can be accessed from inside the library. Unbeknownst to the library staff, the patron's laptop utilized Internet Explorer's remember login and password feature. Though the library staff had previously explained to this patron that the free access was for use only within the library, the patron used

¹ Online Public Access Catalog or OPAC is a computerized online catalog of the materials held in a library, or library system.

the stored login and password outside the library. When the unauthorized PACER use was discovered, the library changed its PACER password, and issued a warning to the patron. That unauthorized usage came to approximately \$8,000.

The second incident occurred at a different FDL where the library staff was logging a patron into PACER using a patron's laptop. This patron accessed PACER only from within the library during business hours. However, this patron had an automated script running that was pulling data from PACER much more rapidly than could be done manually. We addressed this by reinforcing that access was only to occur from library-owned computers. This usage came to approximately \$30,000.²

The final incident, and the one which precipitated the suspension of the pilot, was discovered when the response time of a court's CM/ECF server appeared to be adversely impacted by what the court believed might be a data mining activity.³ The FBI is currently investigating the incident.

² Unlike the first incident where the amount could be directly quantified, this virtual access was indistinguishable from other library access, and the estimate is in comparison to prior monthly usage.

³ When a PACER user's access adversely affects CM/ECF performance, the PACER user is contacted and requested to run its queries in the evening.

7. There have been reports of sensitive personal information such as social security numbers being included in documents posted on the PACER system. What safeguards are being employed to minimize those sorts of privacy violations and to correct them if they inadvertently occur?

To prepare for electronic filing in the federal courts, the Judicial Conference adopted a privacy policy in 2001 to prevent the dissemination of personal identifiers contained in documents filed in the federal courts. Under the E-Government Act of 2002, which required the adoption of rules to protect privacy and security concerns relating to electronic filings, the Federal Rules of Appellate, Bankruptcy, Civil, and Criminal Procedure were amended effective December 1, 2007, to prevent dissemination of personal identifiers in documents filed in federal courts.¹ The amended rules were adopted under the Rules Enabling Act, which requires years of study, open committee meetings, and public hearings. The privacy policy and the amended rules generally require that federal court filings must be available electronically to the same extent they are available at the courthouse, provided that certain personal identifiers, including social security numbers, are redacted from those filings by the attorney or the party making the filing.

The 2001 Judicial Conference privacy policy and the 2007 privacy rules place the responsibility for redacting personal identifiers in court filings on the litigants and lawyers who generate and file the documents. The litigants and lawyers are in the best position to know if such information is in the filings and, if so, where. Making litigants and lawyers responsible to redact such information has the added benefit of restraining them from including such information in the first place. Requiring court staff to alter pleadings, briefs, transcripts, or other documents filed in court was considered. Because court staff are unfamiliar with the documents, this approach was impractical. In addition, having court staff unilaterally changing documents filed in court potentially compromises the neutral role the court must play. For these reasons, the federal rules impose the redaction responsibility on filers. The Committee Notes accompanying the 2007 rules clearly state: "The clerk is not required to review documents filed with the court for compliance with this rule. The responsibility to redact filings rests with counsel and the party or non-party making the filing."² The courts have made great efforts to ensure that filers are fully aware of their responsibility to redact personal identifiers. Those efforts continue.

Examples of steps currently in place to ensure that the privacy protections are followed include training lawyers when they register to use PACER and a number of instructions and reminders to lawyers and litigants on the obligation to redact personal identifier information. Court clerks use a variety of court communications, such as newsletters, listserves, continuing legal education programs, and notifications on websites administered directly by the courts, to reach as many filers as possible, as effectively as possible. Judges have received training as well on the importance of reminding lawyers and litigants of their redaction obligations. Court personnel have been trained in administering the privacy policy and rules, and additional training is taking place. On February 23, 2009, the Administrative Office issued a written directive to all clerks of court emphasizing the requirement to have personal identifiers redacted from

¹ Fed. R. App. P. 25(a)(5); Fed. R. Bank. P. 9037; Fed. R. Civ. P. 5.2; and Fed. R. Crim. P. 49.1.

² Fed. R. Civ. P. 5.2 (Committee Note).

documents before they are filed and the importance of reminding filers of their redaction obligations. The directive provided clerks with a number of options for informing filers. Plans are underway to modify the national CM/ECF system to include an additional notice reminding filers of their redaction obligation. In addition, information is being collected from the individual courts on their experiences with the privacy policy and rules. The responses will provide better information on the scope of, and reasons for, any noncompliance and on solutions to consider for possible national adoption.

The reported instances of personal identifier information contained in court filings are disturbing, and the Judicial Conference has taken concrete steps to address them. Two Conference committees are reviewing the rules, the policy, and their implementation. The Privacy Subcommittee of the Rules Committee, which developed and proposed the 2007 privacy rules, is charged with the task of examining how the rules have worked in practice, what issues have emerged since they took effect on December 1, 2007, and why personal identifier information continues to appear in some court filings. The subcommittee includes representatives from the Advisory Rules Committees as well as the Court Administration and Case Management Committee. It will consider whether the federal privacy rules or the Conference privacy policy should be amended and how to make implementation more effective. The subcommittee will review empirical data; the experiences of lawyers, court staff, and judges with electronic court filings; the software programs developed by some district and bankruptcy courts to assist in redacting personal identifier information; and other measures taken by different courts to increase compliance with the privacy rules.

Protecting both privacy and public access to court records raises difficult and complex issues. Court filings can be voluminous. Some cases involve hundreds or even thousands of pages of administrative or state-court paper records that cannot be electronically searched. Redacting personal identifier information in certain criminal proceedings may interfere with legitimate law enforcement activities. Erroneously redacting information can affect the integrity of a court record. The propriety of court staff altering papers filed in private civil litigation is an ongoing concern. Internet access to court filings present other privacy and security issues besides the redaction of the personal identifiers specified in the 2007 rules, and these issues need to be studied as well.

The resolution of these and other issues involves important policy decisions that require careful and comprehensive consideration and input from the bench, bar, and public. The issues are now being systematically reviewed under the Rules Enabling Act rulemaking process, which is designed to identify problems with litigation practices and ensure that all persons who may be affected have an opportunity to consider proposed solutions and express their views.

- 8. What progress are the courts making in recruitment and hiring of qualified minority clerks and other professional staff? Please update the tables that appear on pages 64 and 65 of the Subcommittee's fiscal year 2009 Judiciary hearing print showing the percentage breakdown of various categories of clerks and other professional and executive staff by ethnicity/race, so as to provide information for the five most recent years for which data was available.**

The Judiciary believes the interests of justice are well served when the court reflects the racial and ethnic diversity of the community in which it resides. No one in the Judiciary doubts the value of diversity among law clerks in federal trial and appellate courts, and yet our numbers suggest that there is significant room for improvement.

The Judicial Conference Committee on Judicial Resources (JRC) ad hoc Subcommittee on Diversity was established to examine diversity within the federal judicial workforce and to consider programs, policies, and training on fair employment practices that would benefit the federal Judiciary. To this end, the Subcommittee has set forth the following goals to increase diversity in the Judiciary: identifying institutional barriers to workforce diversity; removing these barriers; establishing institutional modifications within the Judiciary that reflect diversity realities; and producing sustainable progress toward achieving workforce diversity.

More specifically, through its education and outreach initiative, judges are developing minority pipelines for recruiting law clerk positions by: (1) working in tandem with minority law student organizations and bar associations; (2) educating law school deans on the benefits to their students of clerking; and, (3) encouraging partners at the nation's top firms to identify and encourage their minority "rising stars" to consider clerking for the Judiciary.

Please refer to **Attachment 2** for updated tables providing the percentage breakdown of various categories of clerks and other court staff by ethnicity/race.

Attachment 2**Chambers Law Clerks (Appellate) by Ethnicity/Race–FY 2002 - 2008**

	Caucasian	African American	Hispanic	Asian American	Native American	Pacific Islander
FY 2002	93.8%	0.9%	0.0%	5.4%	0.0%	0.0%
FY 2003	86.8%	3.5%	1.5%	7.9%	0.5%	0.0%
FY 2004	87.3%	2.8%	1.6%	8.1%	0.2%	0.0%
FY 2005	86.8%	3.1%	1.8%	8.0%	0.3%	0.0%
FY 2006	82.8%	3.2%	2.0%	6.7%	0.2%	0.0%
FY 2007	87.1%	3.5%	2.4%	6.7%	0.1%	0.2%
FY 2008	86.7%	3.3%	2.2%	7.4%	0.1%	0.2%

Ethnicity percentages are based on the following formula: Ethnicity category count/
(Total Count–Not Reported)–percentages shown may not add to 100 due to rounding.

Chambers Law Clerks (District) by Ethnicity/Race–FY 2002 - 2008

	Caucasian	African American	Hispanic	Asian American	Native American	Pacific Islander
FY 2002	92.0%	2.6%	2.2%	2.9%	0.3%	0.0%
FY 2003	88.8%	3.4%	3.0%	4.6%	0.2%	0.0%
FY 2004	86.7%	4.3%	3.3%	5.4%	0.2%	0.2%
FY 2005	86.0%	4.5%	3.3%	5.8%	0.1%	0.2%
FY 2006	84.9%	4.1%	3.4%	6.0%	0.2%	0.1%
FY 2007	86.1%	3.9%	3.6%	5.9%	0.1%	0.2%
FY 2008	86.1%	4.1%	3.3%	6.2%	0.1%	0.2%

Ethnicity percentages are based on the following formula: Ethnicity category count/
(Total Count–Not Reported)–percentages shown may not add to 100 due to rounding.

- 9. Please provide a list of the Judiciary's courthouse construction priorities for the next five years, including any "emergency" space needs. For each project, please indicate the amount already appropriated (if any) and the fiscal year of each such appropriations, along with the Judiciary's estimate of the further amounts needed for each project (broken down into the site costs, design costs, construction costs, and other costs).**

Please refer to **Attachment 3** for the list of the Judiciary's courthouse construction priorities for the next five fiscal years (2010-2014) that was approved by the Judicial Conference of the United States on March 17, 2009. The Judiciary does not estimate the amount needed to design and build courthouse construction projects but relies on GSA to provide these estimates. Included in the chart are all funds spent to date on each of the projects.

There is currently one unfunded Judicial space emergency that is the Judiciary's top space priority - the project in Los Angeles, California. This is a cost overrun project that received its original construction funding five years ago. It, therefore, does not appear on the Judiciary's prioritized list of new courthouse construction projects for FY 2010. The \$314 million in construction funds appropriated in FY 2005, plus the \$50 million appropriated the year before, proved insufficient because of the tight construction market in California and rising costs of building materials. The scope of the project, however, was subsequently reduced significantly to bring it within budget, while still meeting the needs of the court. Unfortunately, building costs continued to escalate at a pace that exceeded the reductions, resulting in the need for additional funds to address the shortfall.

Attachment 3

FIVE-YEAR COURTHOUSE PROJECT PLAN FOR FYs 2010-2014
APPROVED BY THE JUDICIAL CONFERENCE OF THE UNITED STATES
MARCH 17, 2009
 (estimated dollars in millions)

FY 2010			Cost	Score	\$ Already Appropriated	Est. Net Annual Rent
1	Austin, TX	Add'l. S&D / C	\$116.1	82.0	\$17 FYs2003+ 2006	\$6.5
2	Salt Lake City, UT	Add'l D / C	\$211.0	67.9	\$11.5 FY1997 \$3 FY2002 \$16.4 FY2007	\$11.4
3	Savannah, GA	Add'l. D	\$7.9	61.3	\$5.5 FYs1995+ 1996	\$3.5
4	San Antonio, TX	Add'l. D	\$4.0	61.3	\$8 FY2004	\$9.2
5	Mobile, AL	Add'l. S&D / C	\$190.3	59.8	\$11.3 FY2002	\$4.7
			\$529.3			\$35.4

FY 2011			Cost	Score	\$ Already Appropriated	Est. Net Annual Rent
1	Nashville, TN	Add'l. S&D / C	\$183.9	67.3	\$14.7 FY2002	\$7.0
2	Savannah, GA	C	\$95.5	61.3	See Above	\$3.5
3	San Jose, CA	Add'l. S	\$38.6	54.5	\$10.8 FY1999	\$9.4
4	Greenbelt, MD	S&D	\$14.0	53.8	\$0	\$1.6
			\$332.0			\$21.5

FY 2012			Cost	Score	\$ Already Appropriated	Est. Net Annual Rent
1	San Antonio, TX	C	\$142.2	61.3	See Above	\$9.2
2	Charlotte, NC	C	\$126.4	58.5	\$8.5 FY2004	\$7.1
3	Greenville, SC	C	\$79.1	58.1	\$11 FY2004	\$4.1
4	Harrisburg, PA	C	\$57.3	56.8	\$26 FY2004	\$5.4
5	San Jose, CA	D	\$17.2	54.5	See Above	\$9.4
			\$422.2			\$35.2

FY 2013			Cost	Score	\$ Already Appropriated	Est. Net Annual Rent
1	Norfolk, VA	C	\$104.7	57.4	\$11.6 FY2002	\$5.1
2	Anniston, AL	C	\$20.4	57.1	\$4.4 FY2004	\$1.1
3	Toledo, OH	C	\$109.3	54.4	\$6.5 FY2004	\$5.9
4	Greenbelt, MD	C	\$170.0	53.8	\$0	\$1.6
			\$404.4			\$13.8

FY 2014			Cost	Score	\$ Already Appropriated	Est. Net Annual Rent
1	San Jose, CA	C	\$223.9	54.5	See Above	\$9.4
			\$223.9			\$9.4

S = Site; D = Design; C = Construction; Addl. = Additional
 All cost estimates subject to final verification with GSA.

10. What is the expected full cost of the multi-year project to replace the Judiciary's voice and data communication system for which \$25 million is requested in fiscal year 2010?

The Judiciary's fiscal year 2010 budget request includes \$25 million for the first year costs of a multi-year project to combine the transmission of data, voice, and video services over a single, secure network. This change to the infrastructure is necessary to ensure that the Judiciary's networks continue to be fully operational, cost-effective, reliable, secure, and capable of supporting new services, while protecting the security and privacy of Judicial communications.

Implementing a converged-services-capable network for the Judiciary is dependent on the award of its Networkx contract.¹ Three Networkx vendors – AT&T, Qwest, and Verizon – have responded to the Judiciary's request for proposals. Award is currently expected in mid-2009.

The Administrative Office is also coordinating the activities of individual courts that are necessary in order to change to the new vendor's data, voice, and video services. Court units wishing to take full advantage of the new converged network capabilities will need to have compatible phone systems, compatible building wiring systems, and enhanced local-area network (LAN) infrastructure in place.

In order to plan for the needs of courts, the Administrative Office is using newly developed equipment inventory tools to collect critical information about the phone systems, wiring plants, and LANs currently in use within courthouses, federal buildings, and leased spaces. The data being collected will be used to create a Judiciary-wide inventory of court phone systems and LAN equipment, which will include information about the age of the systems, as well as their capabilities and usage. The inventory data will be used to support a better-informed budgeting process of system replacements for both the AO and the courts. It will also help support a national approach to engineering that can provide better service to the courts than existing court unit-by-unit and building-by-building solutions. Therefore, as the requirements described above are further refined the Judiciary will be in a better position to project long range costs of this necessary undertaking.

¹ The General Services Administration manages the government-wide Networkx contract, which is a contractual vehicle under which federal agencies purchase services, including voice and phone-related services, virtual private networks, IP telephone and IP-related services, managed firewalls, e-authentication and other security services, cell phone and wireless services, video conferencing, web conferencing, and other related services. Networkx replaces the current government-wide FTS2001 contract and offers more advanced telecommunications technologies and services.

- 11. The Judiciary's Congressional Budget Justification indicates that payments to the Federal Protective Service are projected to increase by 16 percent, from \$67.381 million in fiscal year 2009 to \$78.171 million in fiscal year 2010. What is the reason for this large increase? Does it reflect expanded services being provided by the Federal Protective Service?**

The funding requested for FPS security charges is based on an estimate provided by FPS to maintain current levels of service. Of the \$10.8 million increase, only \$146,665 is for costs in new space that will come online in FY 2010. We have requested a revised estimate from FPS and are awaiting this information. No additional "services" are expected.

Questions Submitted for the Record by Rep. Jo Ann Emerson

1. I understand that you project that in fiscal year 2009, there will be over 175,000 convicted offenders supervised in our communities and over 57,000 charged defendants awaiting trial supervised in our communities. Your budget request proposes an increase of \$10.7 million and 236 additional positions for probation and pretrial services.

- **How will these additional resources help ensure that people serving probation are not posing a risk to the communities in which they live?**

The additional resources will be used to hire, train, and equip probation officers who work in the community to specifically address the risk and needs of offenders. To respond to this question of risk, probation officers are required to address the factors research has identified as the leading causes of recidivism, namely: low offender impulse control, antisocial personality and values, criminal peers, substance abuse, and family dysfunction. Officers address these issues through a variety of means based on the individual circumstances of the case. A common theme to all officer strategies, however, is ongoing monitoring of offender's behavior and thinking patterns. Officers interact with offenders in the community, at home and elsewhere, and develop working relationships with the offender's family, friends and community leaders. To further monitor behavior, probation officers administer drug tests and liaison with local police and consult investigative databases. In high risk cases, probation officers conduct surveillance and, if authorized by the court, monitor the offender's whereabouts through electronic means (e.g., GPS) and conduct warrantless searches.

When a probation officer determines an offender is being noncompliant, the officer is required to quickly intervene in a way that protects the community, promotes future compliance with court orders, and facilitates long term behavioral change in the offender. In some instances, where there is actual or potential new criminal activity, the probation officer is required to notify the court and pursue sanctions, up to and including a new prison term.

- **How will these additional resources help offenders released from Federal prison become productive members of society, especially those with substance abuse and mental health problems?**

As noted above, additional resources will be used to increase probation officer staffing and support to address both the risks and needs presented by offenders. Related to needs, officers are required to be familiar with resources in the community that can address offenders' basic needs (e.g. shelter), employment, and treatment for substance abuse and mental illness. In terms of treatment, some probation officers are credentialed and can provide treatment services directly. In other instances, officers can make referrals to community based providers or providers on contract to the probation office. When making treatment decisions, probation officers are required to consider the individual circumstances of the offender as well as available research. For example, research indicates that providing intense treatment to low risk offenders can actually increase risk level. At the same time, treatment lasting fewer than 90 days is often

ineffectual. Officers use their clinical judgment, experience and empirical assessment devices to strike the necessary balance.

Until fairly recently, probation offices only had spending and contract authority related to services for chemically addicted and mentally ill offenders. The Second Chance Act expanded the courts' authority to provide and secure services, such as vocational training, for offenders who are not necessarily drug addicted or mentally ill. Guidelines for exercising that authority are now in development and will be submitted for the consideration by the Judicial Conference of the United States.

- **With the enactment of the Adam Walsh Act, the Federal government has increased its apprehension and conviction of sex offenders. Upon release from prison, these offenders require specialized supervision techniques and enhanced monitoring. Do your probation offices have sufficient resources to effectively supervise sex offenders and protect the citizens of the communities in which they live?**

The number of offenders under supervision for a federal sex crime, or who have a prior history of sex offenses, has increased. A snap shot taken of persons under supervision on September 30, 2004 indicated there were 3,373 such offenders. The total was 4,928 on the same day in 2008 (an increase of 46 percent). Probation officers in the community are reporting that sex offender cases involve more supervision conditions, longer terms of supervision, and closer vigilance due to the risk to the community. GPS monitoring, polygraph examinations, computer restrictions, and search conditions are common in sex offender cases and do require considerable resources. Fortunately, due to funding provided by Congress the past few years, staffing levels have increased allowing for handling of the additional cases. However, as sex offenders begin to constitute a larger portion of the federal caseload (right now sex offenders make up 4 percent of the total persons under supervision), unquestionably more per capita resources will be needed.

2. **The President has called for the closure of the Guantanamo Bay Detention Center and the Administration is currently studying what to do with the remaining detainees. If these detainees are tried in the United States in Federal court, I assume this will require a significant amount of resources for physical security, renovating courthouse space to securely store and discuss classified information, and providing representation for the detainees.**

- **Has the new Administration been in contact with the Judiciary on the possibility of having trials for these detainees in the United States in Federal court?**

The Judiciary has not heard any firm plans from the Department of Justice about how and where any Guantanamo trials will be held in federal courts.

- **Do you have any idea what the cost of these trials could be?**

These trials would certainly have an impact on the resource needs of the courts and the U.S. Marshals Service (USMS). Specifically, the trials could require increased security, storage facilities for classified documents, increased security for jurors, witnesses and the judge, and enhanced perimeter protection for the courthouse.

Until there is a firmer plan from the Executive Branch about how these cases will be handled in federal courts, the Judiciary is unable to provide further specificity to the potential costs. The Judiciary is, however, communicating regularly with the USMS in order to be prepared for these cases and will keep the Subcommittee informed.

Questions Submitted for the Record by Rep. Barbara Lee

1. I represent the California 9th District, which includes Oakland and the Ron Dellums Federal building. The Federal Building was built as part of the Oakland City Center redevelopment project.

I am committed to ensuring that our Federal workforce reflects diversity that is America -- and that includes the federal workforce at the Judiciary. I certainly understand that we want the most qualified person for the job and I also certainly understand that we want individuals who are committed to excellence in performing our duties. With that understanding:

- Do you keep diversity records of the staff for the Federal Judiciary?

Yes.

- If so, can you give me the diversity breakdown of the clerks and support staff in the Federal Judiciary by race and gender, in total and separated by job titles, seniority or pay scales, as best may illuminate the makeup of the Judiciary's work force?

Please refer to Attachment 4.

Court Unit Executives and Deputies, Preliminary Fiscal Year 2008 Data

Category	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23	2023-24	2024-25	2025-26	2026-27	2027-28	2028-29	2029-30	2030-31	2031-32	2032-33	2033-34	2034-35	2035-36	2036-37	2037-38	2038-39	2039-40	2040-41	2041-42	2042-43	2043-44	2044-45	2045-46	2046-47	2047-48	2048-49	2049-50	2050-51	2051-52	2052-53	2053-54	2054-55	2055-56	2056-57	2057-58	2058-59	2059-60	2060-61	2061-62	2062-63	2063-64	2064-65	2065-66	2066-67	2067-68	2068-69	2069-70	2070-71	2071-72	2072-73	2073-74	2074-75	2075-76	2076-77	2077-78	2078-79	2079-80	2080-81	2081-82	2082-83	2083-84	2084-85	2085-86	2086-87	2087-88	2088-89	2089-90	2090-91	2091-92	2092-93	2093-94	2094-95	2095-96	2096-97	2097-98	2098-99	2099-00	2100-01	2101-02	2102-03	2103-04	2104-05	2105-06	2106-07	2107-08	2108-09	2109-10	2110-11	2111-12	2112-13	2113-14	2114-15	2115-16	2116-17	2117-18	2118-19	2119-20	2120-21	2121-22	2122-23	2123-24	2124-25	2125-26	2126-27	2127-28	2128-29	2129-30	2130-31	2131-32	2132-33	2133-34	2134-35	2135-36	2136-37	2137-38	2138-39	2139-40	2140-41	2141-42	2142-43	2143-44	2144-45	2145-46	2146-47	2147-48	2148-49	2149-50	2150-51	2151-52	2152-53	2153-54	2154-55	2155-56	2156-57	2157-58	2158-59	2159-60	2160-61	2161-62	2162-63	2163-64	2164-65	2165-66	2166-67	2167-68	2168-69	2169-70	2170-71	2171-72	2172-73	2173-74	2174-75	2175-76	2176-77	2177-78	2178-79	2179-80	2180-81	2181-82	2182-83	2183-84	2184-85	2185-86	2186-87	2187-88	2188-89	2189-90	2190-91	2191-92	2192-93	2193-94	2194-95	2195-96	2196-97	2197-98	2198-99	2199-00	2200-01	2201-02	2202-03	2203-04	2204-05	2205-06	2206-07	2207-08	2208-09	2209-10	2210-11	2211-12	2212-13	2213-14	2214-15	2215-16	2216-17	2217-18	2218-19	2219-20	2220-21	2221-22	2222-23	2223-24	2224-25	2225-26	2226-27	2227-28	2228-29	2229-30	2230-31	2231-32	2232-33	2233-34	2234-35	2235-36	2236-37	2237-38	2238-39	2239-40	2240-41	2241-42	2242-43	2243-44	2244-45	2245-46	2246-47	2247-48	2248-49	2249-50	2250-51	2251-52	2252-53	2253-54	2254-55	2255-56	2256-57	2257-58	2258-59	2259-60	2260-61	2261-62	2262-63	2263-64	2264-65	2265-66	2266-67	2267-68	2268-69	2269-70	2270-71	2271-72	2272-73	2273-74	2274-75	2275-76	2276-77	2277-78	2278-79	2279-80	2280-81	2281-82	2282-83	2283-84	2284-85	2285-86	2286-87	2287-88	2288-89	2289-90	2290-91	2291-92	2292-93	2293-94	2294-95	2295-96	2296-97	2297-98	2298-99	2299-00	2300-01	2301-02	2302-03	2303-04	2304-05	2305-06	2306-07	2307-08	2308-09	2309-10	2310-11	2311-12	2312-13	2313-14	2314-15	2315-16	2316-17	2317-18	2318-19	2319-20	2320-21	2321-22	2322-23	2323-24	2324-25	2325-26	2326-27	2327-28	2328-29	2329-30	2330-31	2331-32	2332-33	2333-34	2334-35	2335-36	2336-37	2337-38	2338-39	2339-40	2340-41	2341-42	2342-43	2343-44	2344-45	2345-46	2346-47	2347-48	2348-49	2349-50	2350-51	2351-52	2352-53	2353-54	2354-55	2355-56	2356-57	2357-58	2358-59	2359-60	2360-61	2361-62	2362-63	2363-64	2364-65	2365-66	2366-67	2367-68	2368-69	2369-70	2370-71	2371-72	2372-73	2373-74	2374-75	2375-76	2376-77	2377-78	2378-79	2379-80	2380-81	2381-82	2382-83	2383-84	2384-85	2385-86	2386-87	2387-88	2388-89	2389-90	2390-91	2391-92	2392-93	2393-94	2394-95	2395-96	2396-97	2397-98	2398-99	2399-00	2400-01	2401-02	2402-03	2403-04	2404-05	2405-06	2406-07	2407-08	2408-09	2409-10	2410-11	2411-12	2412-13	2413-14	2414-15	2415-16	2416-17	2417-18	2418-19	2419-20	2420-21	2421-22	2422-23	2423-24	2424-25	2425-26	2426-27	2427-28	2428-29	2429-30	2430-31	2431-32	2432-33	2433-34	2434-35	2435-36	2436-37	2437-38	2438-39	2439-40	2440-41	2441-42	2442-43	2443-44	2444-45	2445-46	2446-47	2447-48	2448-49	2449-50	2450-51	2451-52	2452-53	2453-54	2454-55	2455-56	2456-57	2457-58	2458-59	2459-60	2460-61	2461-62	2462-63	2463-64	2464-65	2465-66	2466-67	2467-68	2468-69	2469-70	2470-71	2471-72	2472-73	2473-74	2474-75	2475-76	2476-77	2477-78	2478-79	2479-80	2480-81	2481-82	2482-83	2483-84	2484-85	2485-86	2486-87	2487-88	2488-89	2489-90	2490-91	2491-92	2492-93	2493-94	2494-95	2495-96	2496-97	2497-98	2498-99	2499-00	2500-01	2501-02	2502-03	2503-04	2504-05	2505-06	2506-07	2507-08	2508-09	2509-10	2510-11	2511-12	2512-13	2513-14	2514-15	2515-16	2516-17	2517-18	2518-19	2519-20	2520-21	2521-22	2522-23	2523-24	2524-25	2525-26	2526-27	2527-28	2528-29	2529-30	2530-31	2531-32	2532-33	2533-34	2534-35	2535-36	2536-37	2537-38	2538-39	2539-40	2540-41	2541-42	2542-43	2543-44	2544-45	2545-46	2546-47	2547-48	2548-49	2549-50	2550-51	2551-52	2552-53	2553-54	2554-55	2555-56	2556-57	2557-58	2558-59	2559-60	2560-61	2561-62	2562-63	2563-64	2564-65	2565-66	2566-67	2567-68	2568-69	2569-70	2570-71	2571-72	2572-73	2573-74	2574-75	2575-76	2576-77	2577-78	2578-79	2579-80	2580-81	2581-82	2582-83	2583-84	2584-85	2585-86	2586-87	2587-88	2588-89	2589-90	2590-91	2591-92	2592-93	2593-94	2594-95	2595-96	2596-97	2597-98	2598-99	2599-00	2600-01	2601-02	2602-03	2603-04	2604-05	2605-06	2606-07	2607-08	2608-09	2609-10	2610-11	2611-12	2612-13	2613-14	2614-15	2615-16	2616-17	2617-18	2618-19	2619-20	2620-21	2621-22	2622-23	2623-24	2624-25	2625-26	2626-27	2627-28	2628-29	2629-30	2630-31	2631-32	2632-33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Data is preliminary, year-to-date submissions.

Judiciary Employees by Occupational Category, Preliminary FY 2008 Data

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Data is preliminary, year-to-date submissions.

All Judiciary Employees by Court Type, Preliminary FY 2008 Data

County	Area (km ²)	Total	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043	2044	2045	2046	2047	2048	2049	2050	2051	2052	2053	2054	2055	2056	2057	2058	2059	2060	2061	2062	2063	2064	2065	2066	2067	2068	2069	2070	2071	2072	2073	2074	2075	2076	2077	2078	2079	2080	2081	2082	2083	2084	2085	2086	2087	2088	2089	2090	2091	2092	2093	2094	2095	2096	2097	2098	2099	2100	2101	2102	2103	2104	2105	2106	2107	2108	2109	2110	2111	2112	2113	2114	2115	2116	2117	2118	2119	2120	2121	2122	2123	2124	2125	2126	2127	2128	2129	2130	2131	2132	2133	2134	2135	2136	2137	2138	2139	2140	2141	2142	2143	2144	2145	2146	2147	2148	2149	2150	2151	2152	2153	2154	2155	2156	2157	2158	2159	2160	2161	2162	2163	2164	2165	2166	2167	2168	2169	2170	2171	2172	2173	2174	2175	2176	2177	2178	2179	2180	2181	2182	2183	2184	2185	2186	2187	2188	2189	2190	2191	2192	2193	2194	2195	2196	2197	2198	2199	2200	2201	2202	2203	2204	2205	2206	2207	2208	2209	2210	2211	2212	2213	2214	2215	2216	2217	2218	2219	2220	2221	2222	2223	2224	2225	2226	2227	2228	2229	2230	2231	2232	2233	2234	2235	2236	2237	2238	2239	2240	2241	2242	2243	2244	2245	2246	2247	2248	2249	2250	2251	2252	2253	2254	2255	2256	2257	2258	2259	2260	2261	2262	2263	2264	2265	2266	2267	2268	2269	2270	2271	2272	2273	2274	2275	2276	2277	2278	2279	2280	2281	2282	2283	2284	2285	2286	2287	2288	2289	2290	2291	2292	2293	2294	2295	2296	2297	2298	2299	2300	2301	2302	2303	2304	2305	2306	2307	2308	2309	2310	2311	2312	2313	2314	2315	2316	2317	2318	2319	2320	2321	2322	2323	2324	2325	2326	2327	2328	2329	2330	2331	2332	2333	2334	2335	2336	2337	2338	2339	2340	2341	2342	2343	2344	2345	2346	2347	2348	2349	2350	2351	2352	2353	2354	2355	2356	2357	2358	2359	2360	2361	2362	2363	2364	2365	2366	2367	2368	2369	2370	2371	2372	2373	2374	2375	2376	2377	2378	2379	2380	2381	2382	2383	2384	2385	2386	2387	2388	2389	2390	2391	2392	2393	2394	2395	2396	2397	2398	2399	2400	2401	2402	2403	2404	2405	2406	2407	2408	2409	2410	2411	2412	2413	2414	2415	2416	2417	2418	2419	2420	2421	2422	2423	2424	2425	2426	2427	2428	2429	2430	2431	2432	2433	2434	2435	2436	2437	2438	2439	2440	2441	2442	2443	2444	2445	2446	2447	2448	2449	2450	2451	2452	2453	2454	2455	2456	2457	2458	2459	2460	2461	2462	2463	2464	2465	2466	2467	2468	2469	2470	2471	2472	2473	2474	2475	2476	2477	2478	2479	2480	2481	2482	2483	2484	2485	2486	2487	2488	2489	2490	2491	2492	2493	2494	2495	2496	2497	2498	2499	2500	2501	2502	2503	2504	2505	2506	2507	2508	2509	2510	2511	2512	2513	2514	2515	2516	2517	2518	2519	2520	2521	2522	2523	2524	2525	2526	2527	2528	2529	2530	2531	2532	2533	2534	2535	2536	2537	2538	2539	2540	2541	2542	2543	2544	2545	2546	2547	2548	2549	2550	2551	2552	2553	2554	2555	2556	2557	2558	2559	2560	2561	2562	2563	2564	2565	2566	2567	2568	2569	2570	2571	2572	2573	2574	2575	2576	2577	2578	2579	2580	2581	2582	2583	2584	2585	2586	2587	2588	2589	2590	2591	2592	2593	2594	2595	2596	2597	2598	2599	2600	2601	2602	2603	2604	2605	2606	2607	2608	2609	2610	2611	2612	2613	2614	2615	2616	2617	2618	2619	2620	2621	2622	2623	2624	2625	2626	2627	2628	2629	2630	2631	2632	2633	2634	2635	2636	2637	2638	2639	2640	2641	2642	2643	2644	2645	2646	2647	2648	2649	2650	2651	2652	2653	2654	2655	2656	2657	2658	2659	2660	2661	2662	2663	2664	2665	2666	2667	2668	2669	2670	2671	2672	2673	2674	2675	2676	2677	2678	2679	2680	2681	2682	2683	2684	2685	2686	2687	2688	2689	2690	2691	2692	2693	2694	2695	2696	2697	2698	2699	2700	2701	2702	2703	2704	2705	2706	2707	2708	2709	2710	2711	2712	2713	2714	2715	2716	2717	2718	2719	2720	2721	2722	2723	2724	2725	2726	2727	2728	2729	2730	2731	2732	2733	2734	2735	2736	2737	2738	2739	2740	2741	2742	2743	2744	2745	2746	2747	2748	2749	2750	2751	2752	2753	2754	2755	2756	2757	2758	2759	2760	2761	2762	2763	2764	2765	2766	2767	2768	2769	2770	2771	2772	2773	2774	2775	2776	2777	2778	2779	2780	2781	2782	2783	2784	2785	2786	2787	2788	2789	2790	2791	2792	2793	2794	2795	2796	2797	2798	2799	2800	2801	2802	2803	2804	2805	2806	2807	2808	2809	2810	2811	2812	2813	2814	2815	2816	2817	2818	2819	2820	2821	2822	2823	2824	2825	2826	2827	2828	2829	2830	2831	2832	2833	2834	2835	2836	2837	2838	2839	2840	2841	2842	2843	2844	2845	2846	2847	2848	2849	2850	2851	2852	2853	2854	2855	2856	2857	2858	2859	2860	2861	2862	2863	2864	2865	2866	2867	2868	2869	2870	2871	2872	2873	2874	2875	2876	2877	2878	2879	2880	2881	2882	2883	2884	2885	2886	2887	2888	2889	2890	2891	2892	2893	2894	2895	2896	2897	2898	2899	2900	2901	2902	2903	2904	2905	2906	2907	2908	2909	2910	2911	2912	2913	2914	2915	2916	2917	2918	2919	2920	2921	2922	2923	2924	2925	2926	2927	2928	2929	2930	2931	2932	2933	2934	2935	2936	2937	2938	2939	2940	2941	2942	2943	2944	2945	2946	2947	2948	2949	2950	2951	2952	2953	2954	2955	2956	2957	2958	2959	2960	2961	2962	2963	2964	2965	2966	2967	2968	2969	2970	2971	2972	2973	2974	2975	2976	2977	2978	2979	2980	2981	2982	2983	2984	2985	2986	2987	2988	2989	2990	2991	2992	2993	2994	2995	2996	2997	2998	2999	3000	3001	3002	3003	3004	3005	3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2. **I am also committed to ensuring that minority businesses are included in all of the procurement and contracting efforts of the Federal government -- and that includes the Federal Judiciary.**
- **Do you keep records on the number of contracts that are awarded to minority and women owned businesses that seek to do business with the Federal Judiciary?**

Procurement in the Federal Judiciary is decentralized to the United States courts and Judicial organizations. There is no central repository containing information relating to Federal Judiciary contracting actions. However, the Administrative Office of the United States Courts was able to obtain information from its financial accounting system relating to fiscal year 2008 contract awards to minority and women owned businesses for the following Judicial organizations:

Administrative Office of the United States Courts
Federal Judicial Center
Sentencing Commission
Court of Federal Claims
Court of International Trade
Court of Appeals for the Federal Circuit
Judicial Panel on Multidistrict Litigation

- **If so, can you give me a listing of the awards to minority and women owned businesses?**

There were a total of 4,880 contract awards in fiscal year 2008 for the Administrative Office of the United States Courts, Federal Judicial Center, Sentencing Commission, Court of Federal Claims, Court of International Trade, Court of Appeals for the Federal Circuit, and Judicial Panel on Multidistrict Litigation. Of this total, 591 contract awards (12.11%) were to minority and women owned businesses. However, we believe this number to be understated. The vendor database for these organizations only captures socioeconomic status for vendors who are registered in the federal Central Contractor Registry (CCR), and we do not require certain vendors, such as experts and consultants, to register in CCR.

3. Since I am new to this subcommittee, and given the fact that we have a new administration that will be making Federal appointments - I am interested in knowing the diversity profile of our Federal judges on the bench.

- How many African Americans, Hispanic, Asian and woman judges do we have on the Federal bench? That also includes Federal Magistrates.

Below is a breakdown of the federal bench by ethnicity and judge type for fiscal year 2008.

FY 2008 Summary for All Judges (active, senior, and recalled judges)

Gender/Race/Ethnicity Demographics for All Judges									
Jdg Type	Gender	Cauc	AfrAm	Hisp	Asian	NatAm	Pacls	NoRept	Totals
Appeals	Male	99	8	9	0	1	0	0	117
	Female	43	4	3	0	0	0	0	50
Bankruptcy	Male	240	5	6	2	0	0	0	253
	Female	81	4	1	1	0	0	0	87
District	Male	381	56	32	6	1	0	1	477
	Female	129	19	14	2	0	1	1	166
FT Magistrate	Male	301	21	16	6	1	1	1	347
	Female	123	12	12	3	0	0	0	150
Other*	Male	14	0	0	0	0	0	0	14
	Female	10	1	0	0	0	0	0	11
PT Magistrate	Male	27	0	1	0	0	0	2	30
	Female	9	0	0	0	0	0	1	10
Recl Bankruptcy	Male	20	0	0	0	0	0	0	20
	Female	1	0	0	0	0	0	0	1
Recl Magistrate	Male	28	0	0	0	0	0	2	30
	Female	2	0	0	0	0	0	0	2
Senior	Male	372	15	10	3	1	1	1	403
	Female	22	4	0	0	0	0	0	26
Subtotals	Male	1,482	105	74	17	4	2	7	1,691
	Female	420	44	30	6	0	1	2	503
Grand Totals		1,902	149	104	23	4	3	9	2,194

4. In your testimony you state that Court officials met to prepare for the expected surge in motions for reduced sentences for crack cocaine offenders. I am encouraged that you were prepared to handle this expected surge in hearings for reduced sentences.

In your testimony, you state that, "A preliminary report released by the US Sentencing Commission shows that from March 2008 through January 21, 2009, judges granted 12,720 or 70% of the 18,109 applications for sentencing reductions.

- How many offenders did this affect in the California 9th District, the local California Bay Area and in the State of California?

The United States Sentencing Commission compiles sentencing data from information received by the federal courts by Judicial circuit and district, rather than by congressional district. However, the information compiled for the Judicial districts in California should provide a good indication of what has occurred in the California 9th District, the California Bay area, and the State of California as a whole. The information provided is with respect to cases in which the court decided a motion under 18 U.S.C. 3582(c)(2) through March 5, 2009, and which were received, coded, and edited by the Commission as of March 9, 2009.

For the State of California, data is presented for all Judicial districts in California (i.e., the Southern, Central, Eastern, and Northern Districts of California). For those four districts combined, there were 195 motions, of which 182 (or 93.3%) were granted.

For the local California Bay area, data is presented for the Northern District of California only (which encompasses the counties of Del Norte, Humboldt, Mendocino, Sonoma, Lake, Napa, Marin, San Francisco, Contra Costa, Alameda, San Mateo, Santa Cruz, Santa Clara, San Benito, and Monterey). For that district, there were 31 motions, all of which (100%) were granted.

For the California 9th District, the Commission is able to present data for the Oakland Division of the Northern District of California (which encompasses the counties of Alameda and Contra Costa). For that division, there were three motions, all of which (100%) were granted.

- Can this Committee rest assured that the processes that are currently in place will ensure that every offender who is eligible to have their sentence reviewed will be given that opportunity and when do you expect that every offender will have had a hearing on their sentence?

Under 18 U.S.C. § 3582(c)(2), a request for a sentence reduction can be made by the Director of the Bureau of Prisons (BOP), by the inmate, or on the court's own motion. The BOP provided notice of the amendment to all inmates by posting announcements in the institutions and hosting group meetings with inmates. In addition, several non-government organizations published notices regarding the amended guideline and, in some cases, directly contacted inmates and their families to provide guidance on how to petition for re-sentencing.

The Federal Judiciary also, independently, took steps to identify all inmates who may be eligible for the reduction. Before the effective date of the amendment, AO staff combined Sentencing Commission data with that from Clerks' Offices, Probation Offices and the BOP to identify and locate those persons convicted of crack offenses and still in custody. In addition, many districts manually reviewed their own case files and docket histories as a fail safe measure. Judges, probation offices, prosecutors and defense attorneys then worked collectively to examine the record of any inmate thought to be eligible for the reduction.

Questions Submitted for the Hearing Record by Rep. John Culberson

1. How are the courts coordinating with the U.S. Attorneys, U.S. Marshals, and the Border Patrol on Operation Streamline?

In FY 2008, immigration case prosecutions in the district courts jumped 27 percent over the preceding year, with 72% of all immigration cases filed in the five Judicial districts along the Southwest border -- the District of Arizona, the Southern District of California, the District of New Mexico, and the Southern and Western Districts of Texas. In addition, misdemeanor immigration cases disposed of by magistrate judges increased by 54%, with 99% of them arising in the five border districts

In response, the Judiciary redeployed existing judges, through inter-circuit and intra-circuit assignments; requested additional judgeships from Congress; recalled retired magistrate judges; expedited consideration of additional magistrate judge positions; reallocated court staff on a temporary basis; allocated funding for additional support positions and defender services; and deployed automation and technology extensively and effectively. The local court offices all have extensive, ongoing coordination with U.S. attorneys, U.S. marshals, and the Border Patrol, so that they can respond promptly to the increasing workload resulting from the implementation of Operation Streamline in the Border Patrol sectors along the Southwest border.

The Judiciary and the local court offices are continually assessing staffing and other resource needs to make sure that court proceedings are staffed and conducted promptly and that record-keeping, interpreting services, and court reporting and recording are complete and accurate. In addition, the federal defender organizations in the border districts are continually assessing staffing needs to make sure that competent defense representation services are provided for the increasing number of immigration prosecutions.

Specific examples of coordination efforts include:

- Regular monthly meetings are held in some districts with district judges, magistrate judges, clerk's office personnel, probation and pretrial services officers, U.S. attorneys, U.S. marshals, Border Patrol representatives, and defense counsel to discuss common problems and solutions.
- Formal and informal contacts are made regularly by the clerks' offices with both the U.S. attorneys and the Border Patrol regarding their future hiring efforts, which directly impact the workload of individual federal courts and the Judiciary as a whole.
- Day-to-day interactions occur between line-level staff and supervisors of the various offices in the Judiciary and the Executive Branch to trouble shoot problems as they arise.
- A very efficient electronic record system -- "RAMBO" (Referrals Automated Module for Border Courts) -- has been developed by the clerk's office in the Western District of Texas. It enables an automated exchange of case referral information between the court

and the Border Patrol for misdemeanor and felony referrals and arrests. Pertinent information is downloaded and electronically transferred among offices.

- Criminal complaints and the required signatures are all generated electronically. Case numbers, assignment of attorneys, scheduling events and documents are expeditiously processed and automatically docketed. Thus, there is a seamless transfer of data from the Border Patrol to the court and back again to the Border Patrol. Record-keeping and noticing that previously had required hours of work are now done in minutes.
- In misdemeanor cases, an initial appearance, change of plea, and sentencing all take place on the same day at some locations because of full coordination and cooperation by the court and U.S. attorneys, U.S. marshals, and the Border Patrol.

Cooperation and advance planning, including budget planning, between the Judiciary and the Departments of Justice and Homeland Security are essential at both the national and local levels to assure the efficiency and success of law enforcement initiatives. Moreover, the courts must harmonize the competing interests of processing large volumes of cases with the requirement to uphold the letter and spirit of the Constitution and the various federal laws and rules that protect both the rights of the accused and the rights of the public.

Continued communications, coordination, and innovation have ensured that the courts are able to handle the substantial additional caseload, deploy court resources quickly, and provide additional resources. The Judiciary will continue with these efforts in cooperation with the several different components of the Executive Branch to respond fully to future prosecution initiatives.

2. What additional resources are needed for the courts to hear immigration cases? (Funding for courtrooms, magistrate judges, clerks, court appointed counsels, and interpreters?)

In fiscal years 2007 and 2008, the Judiciary received a total of \$45 million to address its most critical workload increases related to immigration and other law enforcement initiatives. Of the total, \$25M (\$23M in S & E, \$2M in Defender Services) was obligated in fiscal year 2008, and \$20M (\$11.5M in S & E, \$8.5M in Defender Services) will be obligated in fiscal year 2009 to hire and retain additional staff. At this time, no additional resources are need for immigration-related workload increases.

The funding provided to the Salaries and Expenses account has helped increase our on-board staffing in probation and pretrial services offices and in district courts. Between fiscal year 2006 and fiscal year 2008, staffing has increased by 397 FTEs (5%) in probation and pretrial services, and by 360 FTEs (5.6%) in district courts.

A key aspect of sustaining this growth was the use of these funds over a two year basis. Courts had more confidence in hiring additional staff because they knew that sufficient funds would exist in the following year to support the full-year costs of those hires.

This additional staff has resulted in additional deputy clerks to process an increase in criminal felony defendants and petty offenses. Felony defendants along the five Southwest Border district courts currently account for nearly one-third of all felony defendants nationwide. In fiscal year 2008, the districts of Texas Southern, New Mexico, California Southern and Texas Western experienced growth rates of 28.7%, 7.1%, 16.1%, and 35.1%, respectively, in the number of felony defendants over 2007 numbers.

Magistrate judges at all border locations are handling thousands of defendants. Because of the additional funding provided by Congress, we were able to accelerate the addition of 3 full-time magistrate judges, and 1 part-time magistrate judge has been added in FY2009 in response to immigration cases on the border. Further, the funding allowed us to add support staff to operate magistrate judge courtrooms and ensure effective interpreter services in sufficient numbers.

The Courts on the Southwest Border continue to work to meet the demands of "Operation Streamline" and other increased border enforcement initiatives. The AO has continued to provide supplemental funding and additive staffing support to address these issues but these courts continue to receive substantial new filings every day especially for prosecutions resulting from "Operation Streamline". One of the largest obstacles to prosecuting more immigration cases along the Southwest border is the lack of adequate detention facilities to house persons arrested and awaiting court proceedings. The recent increases in prosecutions under Operation Streamline II and other related initiatives have placed substantial strain on existing holding facilities for in-custody defendants. The number of defendants who can be brought before the courts is limited at various locations. In fact, the lack of adequate detention facilities at certain border locations is an impediment to full implementation of Operation Streamline II.

Providing detention facilities is an Executive Branch function. The Department of Justice is responsible for securing places to house detainees – either in federal facilities or through contracts with state and local jails – and for transporting prisoners between the off-site facilities and federal courthouses. Unless the Executive Branch is able to provide the appropriate level of facilities and other resources, the courts cannot handle the volume of cases that the Executive Branch and Congress would like to have prosecuted.

In addition to a shortage of off-site detention facilities, there are not enough courthouse holding cells, courtrooms, and related court facilities along the border to handle all the defendants who might be prosecuted under Operation Streamline II. The lack of space imposes a practical limit on the number of cases that can be processed at any given location.

New courthouses are under construction in El Paso and Las Cruces. The foundation has been dug for a new courthouse in San Diego, California, but all the needed funds were only recently provided in the FY 2009 Omnibus appropriation. It will be several years before it can open. A new courthouse in Yuma is also moving forward because of the availability of additional funding provided by Congress. In Tucson, the federal courthouse opened in 2000, but is inadequate already, as criminal case filings have increased well beyond the volume projected when the building was designed. At the other border locations, court space and detention facilities are limited.

Mrs. EMERSON. And thank you all so much for being here today.
Mr. SERRANO. We thank you for your testimony and we thank you for your continued service. The meeting is adjourned.

THURSDAY, APRIL 23, 2009.

U.S. SUPREME COURT

WITNESSES

CLARENCE THOMAS, ASSOCIATE JUSTICE, U.S. SUPREME COURT
STEPHEN G. BREYER, ASSOCIATE JUSTICE, U.S. SUPREME COURT

OPENING STATEMENT OF CHAIRMAN SERRANO

Mr. SERRANO. Our hearing will come to order, and our subject today is the Supreme Court and its appropriations request for the upcoming fiscal year. We will be hearing from two distinguished Justices of that Court.

These annual hearings are a rare opportunity for our two branches of government to interact. Congress, of course, has constitutional responsibility over Federal spending, including appropriations for the Supreme Court and the rest of the judiciary. Although I always have some personal concern about asking the Third Branch to come and testify before us about buildings, staffing levels and computers rather than whether I can run for President or not, these hearings provide an important opportunity for the Nation's highest Court to bring to light issues affecting the judiciary as well as to help us understand their budgetary needs. If in the process our two branches get to know one another a little better, that is an added bonus.

Meeting the needs of the judicial branch is a priority of this subcommittee. Courts have a vital role to play in a society like ours where the rule of law is a core principle. We need to be sure the courts have the resources they need to dispense justice with reasonable speed and care, and with proper regard for the rights of defendants and litigants and the needs of our society. At the same time, we also have a responsibility to exercise due diligence in spending matters and to balance competing needs.

While appropriations for the courts are small relative to the total Federal budget, the judicial branch does account for more than a quarter of our Financial Services and General Government Appropriations bill. In some years, the percentage increases involved are substantial. Having said that, I should also add that we recognize and appreciate recent efforts by the judiciary, including the Supreme Court, to exercise budgetary restraint and find ways of holding down costs.

We look forward today to a discussion of the budget of the Supreme Court, their needs. Our witnesses are Justice Clarence Thomas, who has been here before us, and we welcome you; and for the first time, his first appearance on this talk show, Justice Stephen Breyer. And we welcome you both.

Justice Thomas was nominated to the Court in 1991 by the first President Bush after serving as Assistant Secretary of Education

for Civil Rights, Chairman of the Equal Employment Opportunity Commission, and as a judge on the Court of Appeals for the District of Columbia Circuit, among other positions. Justice Breyer joined the Court in 1994 as a nominee of President Clinton. And many positions he held prior to that time include professor at Harvard Law School, staff member for the Senate Judiciary Committee, and judge, and then Chief Judge of the Court of Appeals for the First Circuit. Justice Thomas has been a witness before, and Justice Breyer is coming before us for the first time.

We welcome both of you and thank you for joining us.

As I said, I always feel a little uneasy, but I have gotten somewhat accustomed to talking to you folks. We take seriously who you are. This branch takes extremely seriously what it is that the Court does. And when I first became Chairman of this committee, and prior to that actually, and the other committee, the whole idea of having you guys discuss budgets, while there are Members, however, that say, yes, bring them there and put them there, I say, well, they are a special crowd, and I think they know they are a special crowd, and we always pray that you behave as a special crowd.

With that in mind, let me introduce a special person, and that is my colleague and our Ranking Member Jo Ann Emerson.

OPENING STATEMENT OF MRS. EMERSON

Mrs. EMERSON. Thank you, Mr. Chairman.

And welcome to you both, Justice Thomas and Justice Breyer.

An independent judiciary, trusted and respected by all citizens, and committed to fairly and expeditiously resolving difficult and controversial questions, is a fundamental tenet of our Nation. Although the Supreme Court budget is not large in comparison to other Federal programs, I am very pleased you all are here today, and recognize the importance of your testimony and appearance before the subcommittee.

This hearing is one of the few instances when the Supreme Court and the legislative branch interact each year, and in my opinion it is a very worthy interaction as we recognize and respect the prerogatives of each branch.

Justice Thomas and Justice Breyer, I look forward to hearing from you all about the resources necessary for the operation of our Nation's highest Court, as well as any thoughts you may have regarding our judiciary system as a whole. While I am concerned that the budget resolution that recently passed the House will burden future generations with an enormous Federal debt, I greatly, greatly appreciate the Court has submitted only a modest increase in funding. I promise to do my best as Ranking Member to ensure that you all have the resources necessary to meet your constitutional responsibilities. So I thank you.

Mr. SERRANO. Thank you.

Mr. SERRANO. As you know, your full testimony will go into the record. And I understand that the lead-off batter this year is you, Justice Thomas.

STATEMENT OF JUSTICE THOMAS

Justice THOMAS. Well, first of all, Justice Breyer and I are pleased to be here. And we are honored to appear before you, Chairman Serrano, for, I guess, more than a dozen times and for the first time, I think, with Congresswoman Emerson as Ranking. We appreciate your being here this morning and your interest in our branch of the government.

I also would like to introduce William Suter who joins us, he is the Clerk of the Court; and Pamela Talkin, who is sitting next to him, is the Marshal of the Court; and Jeffery Minear, behind me, who is Counselor to the Chief Justice; and Kathy Arberg, to his far left; and Connie Phillip, who is sitting next to him, who is Budget Manager at the Court. They are instrumental and central in the preparation of our budget as well as the operation of the Court. I have always wondered why the more competent among us in these administrative matters would allow us to testify.

Mr. Chairman, I will not read from the brief statement that we have submitted, but I do want to make a couple of points that we made in the statement. One, as you both have indicated, our budget is tiny compared to other agencies in the Federal Government and a minuscule percentage or part of the Federal Government's budget. But it is still for us important, and we recognize that in these difficult times, all budgets are to be looked at in a very disciplined way. And we have done that.

In the years that I have appeared before you, in addition to the years that certainly I have been in the executive branch, we have always requested only what was necessary for the Court's operation, and it is no different this year. Our budget, as you know, is divided into two parts, the salaries and expenses of the Court and the care of the buildings and grounds. Now, Justice Breyer and I will only discuss the former. The latter, of course, is discussed by the Acting Architect of the Capitol, Stephen Ayers.

But I do want to make one comment about the budget, about the grounds, the buildings and grounds portion of the budget. With respect to the renovations of the building, we are, as you know, behind. The project was late or slow in starting. So rather than being completed this year or last year—actually 2008 was the scheduled year—it will be completed in the late summer or fall of 2010. Most of that delay, as I said, was at the beginning of the renovation process, and it has worked smoothly since.

With respect to the salaries and expenses, the only increases are the mandatory increases. We are asking simply, as we did last year, as you remember when we were before you last year, we asked for no increase beyond the mandatory increases, inflation, the increases built into our retirement, those sorts of things.

There is one addition this year that is rather important, and I would like to take a look, just a minute, to reflect back. I was looking over previous testimony before this committee and one question you asked me, I think, in 2004, and among these many papers I have here, I think I have that question. But in essence you asked me when our Website was going to be up and running so that it was useful—more useful and more timely. And I think it was March 17, 2004. At the time we were running about as fast as we

could. In fact, if you go back to the year 1998, this committee prod-
ded us about being more responsive to the public.

When Chairman Wolf was here, he was very focused on the Court being accessible to the public with the new technologies. As a part of that, we made it our mission to develop a Website. We did not have that capacity within the building or intramurally, so we placed that Website at GPO in order to get it done. The first year that we had that Website available, we had 11 million hits.

Well, times have changed. Just this past January we had almost 19 million hits. The Website is outdated. We are at a crossroads. It is time to do something with it. In the meantime, we have developed much more capacity internally. We have almost half of the infrastructure available in house to develop or to run the Website. It also makes more sense from an administrative standpoint and from an operational standpoint to have it in house.

So to answer that question that you asked me in 2004 is to say the last piece of that puzzle is to bring it in house, and that will make it more responsive. To do that, we are requesting an additional \$799,000; not 799 million or 7.99 million, but 799,000. There is a one-time cost for the equipment and five individuals to actually operate it. We think this makes eminent sense, and it is consistent with the direction that we have been heading.

Now, we recognize, as I said at the beginning, the difficulties, the budgetary constraints that we are operating under, and we do not submit this lightly, but as I said, we have never come before you and asked for anything more than we thought was necessary, and we think that this is necessary to complete a project that we have jointly, and often at your insistence and direction and suggestion, been involved in over the past decade.

Mr. SERRANO. Thank you, Justice Thomas.

[The information follows:]

**Statement of Justice Clarence Thomas
Associate Justice of the Supreme Court of the United States
before the
Subcommittee on Financial Services and General Government
of the
House Committee on Appropriations
April 23, 2009
10:00 am
Rayburn House Office Building, Room 2358-A**

Chairman Serrano and Members of the Subcommittee:

Thank you for your kind words of welcome. Justice Breyer and I are pleased to appear before you, on behalf of the Supreme Court, to address the Court's budgetary requirements and requests for fiscal year 2010. We share your appreciation that this hearing is one of the few occasions in which Members of the Court meet with Members of Congress, and we are grateful for the consideration that you always show to us.

As you may have noticed, we are accompanied today by Court personnel, including William Suter, Clerk of the Court; Pamela Talkin, Marshal of the Court; Jeffrey Minear, Counselor to the Chief Justice; Kathy Arberg, our Public Information Officer, and Connie Phillip, our Budget Manager.

Mr. Chairman, on every occasion that we have appeared before this Subcommittee, you and the ranking Member have spoken generously of the important role that the Supreme Court plays in our constitutional structure. We likewise recognize the important role of Congress, including its

responsibility to make appropriations for the operation of the government. We also recognize the important role of this Subcommittee in that process, and we would like to express our thanks for your support in addressing the Court's needs in fiscal year 2009.

The Supreme Court's budgetary needs are tiny compared to the whole federal government. We nevertheless take very seriously our responsibility to carefully review our needs and seek no more funding than necessary. And we are well aware that, in these difficult times, we must be especially vigilant to ensure that we maintain budgetary discipline.

As is customary, the Supreme Court's budget request is set out in two parts: first, "Salaries and Expenses of the Court"; and second, "Care of the Building and Grounds." Justice Breyer and I will address the salary and expenses portion, while the Acting Architect of the Capitol, Stephen Ayers, will present a separate statement to the Subcommittee concerning the budget request for the Care of the Building and Grounds.

On the subject of the Building and Grounds, I will simply note that the modernization of the Supreme Court building is expected to be completed in September 2010. The project encountered delays in its early stages, and it will therefore be completed behind the scheduled date of 2008. But the project is currently keeping pace with the revised timeline, and it continues to be within its original budget. Court personnel meet regularly with the staff of the Architect of the Capitol and the construction contractors in order to ensure that the project stays on budget and that no further slippage in the schedule will occur.

My focus, however is on Salaries and Expenses. The Court requests an appropriation of \$74,740,000 for fiscal year 2010. That sum reflects an increase of \$4,963,000, or 7.1%, over our appropriation for fiscal year 2009. Most of the increase represents base adjustments, including \$3,818,000 for required increases in salary and benefit costs, and \$346,000 for inflationary increases in fixed costs of the Court's necessary operations.

Last year, the Court requested nothing beyond an increase in base adjustments that merely kept pace with inflation. This year, however, the Court makes a modest additional request to meet a vital need of the Court. The Court seeks an additional appropriation of \$799,000 to enable the Court to manage its own Website and integrate it with the Court's other operations.

As you may know, the Government Printing Office (GPO) has hosted the Supreme Court's Website since its debut in 2000. The GPO took on the responsibility because the Court had very little experience with Web operations and the Court Website was a novelty. In the ensuing years, the Court's Website has become increasingly popular and the public has come to depend on it for up-to-date information about the Court's operations. The Website currently provides the portal for access to the Court's case dockets, oral argument transcripts, and opinions and orders, as well as other useful information about the Court. In January of 2009, there were 18,765,000 successful "hits" to our Website. This is a 100% increase in traffic over the same period in 2008.

It is no longer practical or efficient for the Court to rely on GPO to host the Court's Website. In order for the Court to provide more timely information about its operations, the Court needs to move its Website in-house and integrate it with the Court's other operations. To do so, the Court is requesting \$496,000 over base adjustments to fund five new positions. Those positions will be responsible for the development, administration, maintenance, and daily support of the Court's Website. In addition, the Court is requesting \$303,000 for hardware, software, network components, and electronics to operate the Website in-house. We have attached an appendix to our written statement that provides additional detail on the details of this request.

The Court is the only major component of government that does not administer its own Website. The Congress, the White House, and all the major Cabinet agencies have taken this step. We believe the small cost of taking this step is essential to maintaining and improving the quality of the Court's Website for the benefit of the public. The costs will be offset by improved efficiencies and reduced costs at the GPO. We understand that GPO has no objection to this initiative.

In closing, I would like to reiterate that we are aware of the severe budgetary constraints facing the federal government and recognize that the Committee must balance the needs of all the agencies under its jurisdiction and make difficult decisions in applying available funds to the most pressing needs. The budget request we submit represents only what we think is necessary to fulfill the Court's mission. We appreciate your careful attention to our modest needs and will be pleased to respond to your questions.

Appendix

The Government Printing Office (GPO) currently hosts the Supreme Court's Website and has done so since 2000. At the time, the Court chose GPO to host the site, rather than taking on the project in-house, to rely on GPO's expertise in providing web services and in ensuring the security of the system.

Use of the Court's Website continues to expand. In January 2009, there were 18,765,000 successful "hits" to the site. This is a 100% increase over January 2008. Over the years, as Internet technology has evolved, the public has increasingly sought more web-based information about the Court in a more timely fashion. The Court has determined that it can best meet those requests by moving its Website in-house and integrating it more closely with its other activities. That transfer will enable the Court to better control and manage the Website and to be able to expand the data and services provided by the site more efficiently.

In recent years, the Court has improved its capability for operating an in-house Website. In 2002, the Court deployed an Internet network for web browsing, and in 2004 the Court expanded and upgraded the infrastructure and capacities for web services and Internet-based email. More recently, the Court has implemented secure connectivity between its Internet network and the lower courts, the Federal Reserve, Lexis and Westlaw, and other agencies. The Court has developed considerable technological expertise in implementing those initiatives. The infrastructure deployed for these initiatives (hardware, software, network and electronics) now provides 45% of the infrastructure needed to host a Website supported by Court staff.

The benefits of an in-house Website have become especially clear in the past year. The Supreme Court has sought to make its orders and opinions promptly available to the public by posting them on the current, GPO-hosted Website. To facilitate GPO's posting of the information, the Court technology team implemented new processes in the fall of 2008 and now creates, edits, and sends finished Website content to GPO for prompt posting. As a result of those efforts, the Court's opinions and orders now typically appear on the GPO-hosted site within five minutes of the Court's announcement in the courtroom.

The Court's experience with Website posting reveals that the Court is capable of maintaining its own Website. Further, because of familiarity with the data, Court staff is able to post the data more timely and more accurately than could ever be expected of the GPO staff. If the Court assumed the responsibility for all data content, the Court could expedite posting even more, reduce the possibility of inadvertent transmittal errors, and eliminate the inefficiencies inherent in transmitting files to GPO that the Court could post itself. For example, rather than transmitting the Court's docket updates to the GPO for posting three times a day, the Court could make the docket updates available as soon as the Court's database is updated. This would allow much more timely information available to the legal community on docketed cases.

The Court's current Website at GPO is nine years old. The system is outdated and must be upgraded to more current technology (both hardware and software) regardless of whether it remains at GPO or is brought into the Court.

The Court can move its Website in-house through a relatively small expenditure of funds. This initiative would require \$303,000 for purchasing additional hardware, software, network components, and electronics to support the Court's Website. It would also require \$418,000 to fund four new full-time information technology specialist positions: one new information technology (IT) specialist who will be the first point of contact for all technical and user issues; a security analyst/auditor who will monitor Website activity, analyze and respond to incidents and implement security enhancements; a software developer who will develop, support, and administer the Website's software applications, and a network administrator who will support the Website network and server environment. The Court would also need \$78,000 to hire a composition specialist to prepare and post data on the Website.

The Court has been conservative and cost-conscious in working toward developing the capacity to operate an in-house Website. The costs of the requested program increases will be offset by reducing expenditures at GPO and eliminating the staff time spent coordinating work between GPO and Court personnel. It is also offset by the anticipated cost for redevelopment of the Court's Website if it should remain at the GPO.

The Court will continue to work with the GPO on initiatives such as permanent document storage and archiving that are more central to that agency's mission.

Mr. SERRANO. Before I go any further, Mrs. Emerson, I am going to bend one of the rules. I think there is a rule in the House that says you don't mention anybody in the audience. But I can't help but notice how many young people are sitting in the audience today, and I think that that is wonderful that they are here on a day when the Supreme Court Justices are before us. And one day, one hearing they will get to see the judicial branch in action in some ways, and the legislative branch. If you are lucky enough to run into President Obama today, you took care of all three branches. So I am not allowed to say you are welcome, but I think it is a proper bending of the rules to acknowledge that.

Justice Breyer, please.

Justice BREYER. I agree with Justice Thomas, and I really have nothing to add to that. But it is very nice to be here, and I appreciate it.

Mr. SERRANO. Well, that was quick.

Let us talk about the Website, because we did come to you and speak a lot about it. And I know you have already mentioned it, but it was run by an outside entity, so to speak, in government. Now you want to run it yourself. The reason for that is closer control, quicker access?

First of all, I commend you on the work you have done on the website, and I think it is important. You know, there are some things that I may be heavy on tradition about, you know, just how much I want to see cameras and reporters running around the Court and having pundits on TV reporting every 5 minutes it looks like Thomas is going to rule this way or not. And I really don't want to hear that or see that. But I think the fact that the people have access to the decisions, to what is going on, that is a good thing. And so is it that you can run it better yourselves, have better access to it yourself, bring it up to date quicker?

Justice THOMAS. It is all of the above. We did what we had to do in 2001 when we developed that site, the Website at GPO, and it has worked well. But as I indicated, it is 9 years old, and it is due for an update. Before we had no capacity. So much of what goes on that Website now is developed in house in order to expedite the process. In the past, we would have—for example, any changes or updates would happen on a daily basis, so you already have a lag of 1 day. So you lose some of the value of the Internet. Now we have, by working in house and developing staff and equipment and capability in house, we have updates several times a day. Again, we are behind the curve. By bringing it in house, those updates and changes, correcting errors will occur instantaneously.

There are also other things. By bringing it in house—just take something simple. You mentioned young people being here today. We schedule tours at the Court. Now you have no ability to do that over the Internet because we don't control the Website, it is off site. When you bring it in house, you are able to do all sorts of things that you are able to do at other Websites. And I think that the ability for us, for our people, to actually make changes, make corrections, make alterations, put information or data on the Website reduces the risk of errors, breach of security. It is just one step that we eliminate from the process.

In addition, it is used more, and we are about to enter an era, if we have 19 million hits in January, which is 100 percent increase over the previous January, what are we going to have next year? And I think we need to get started to get ahead of it to be ready for what is going to happen in the future, and bringing it in house is the logical step to doing that.

Justice BREYER. I will give you an example, Mr. Chairman. It will let us react quickly; if we have an idea, suddenly we want to broadcast something on the Website.

For example, you are pleased that the schoolchildren are here. When they come to the Court, I am pleased, too. And when I talk to children, and my colleague here does, too, quite a lot, the thing that worries me the most is that there are too few of them, not that there are too many.

So a few years ago, Justice O'Connor and I had in the conference room—we had a hookup, and that hookup brought us students from Lowell High School, San Francisco, where I went to high school, and her high school in El Paso, Texas, and we had a group there from Virginia. And all three groups were asking us questions and talking. We had a good discussion.

And if it were today, I would go to any of these people here; I would go to our fabulous staff here, if it were today, and I would say, hey, let us put this on the Web as we are doing it. And suddenly 18 million people or maybe 40 million—you know, you give them more than 10 minutes advance notice—would have tuned in. That would have been fabulous, because I think if there is one problem that faces us, and I think I can include you in that, it is the public not knowing how their institutions work.

Mr. SERRANO. Exactly. That is why a half an hour before I came here, I updated my status on Facebook to let people know that I was going to ask you about whether I could run for President or not. Actually serve. Anyone can run.

Which brings me to another point, and I know this is a touchy one, but we always see anything we put out as for the 50 States and the territories. So the issue of language has always been an issue. It is in English, of course, and nothing else. You know, it is a global Internet, and we have a lot to be proud of how we run our Court, how our system works. So I think the more languages that we put our information out in is not diluting English, it is just letting other folks know how good and how strong we are. So in future budgets, I would suggest to you that not for the reasons that Bill O'Reilly would be upset about, or Lou Dobbs or who somebody else—okay, I will pick a liberal.

Mrs. EMERSON. Keith Olbermann.

Mr. SERRANO. He won't be upset. I will find one. But there are folks on both sides who think that everything should only be in English. English is our language, but I am talking about you want people in Venezuela to read about what we are doing. You want people, as Cuba opens up and changes, to read what we are doing. You want it all over the world. So other languages are important, too.

ORAL ARGUMENTS AUDIOTAPES

One last point before I move on. I commented on the fact that I don't want a process by which pundits on CNN or FOX will be commenting every 20 minutes on what you guys are going to do, and how you are going to do it, and why you are going to do it, and who influenced you. It will get out of hand. The statement I am making now, and this is being recorded, will not make my liberal friends happy because they believe in openness, and so do I, but there has got to be some desire to keep the integrity of the Court intact.

So with that in mind, are you folks satisfied with the way you are handling the whole issue of the audio transcripts that are being made available I believe it is a couple of hours after a decision is made or a hearing takes place? How do you feel about that? Do you want changes there? Is there a better way of doing it?

Justice THOMAS. I will comment briefly on that. Justice Breyer has a special interest in this.

In the past, the audiotapes as a matter of routine were not available during the term. They are archived, and they are available after the term. On select occasions we have simultaneously broadcast, I think 11 occasions, or provided them shortly after oral argument. What is available after oral argument are the transcripts of oral argument.

Are we content with the way it is being handled? We certainly have no reason to be anything but content, I mean, in the sense that it doesn't affect our work. The difference is that we are beginning to feel some pressure or some interest in—increased interest from those—from media outlets for immediate access to the audio version, and we have maintained our policy that in certain select instances we would make them available shortly after or simultaneously broadcast. And we did that, I think, with *Bush v. Gore*. But we have not, as a matter of routine, made the audios available either during the term, the current term that it is recorded, or immediately after or during. It is always subsequent to.

Justice BREYER. Well, I add that I think it is a process, an evolution, and the reason it is an evolution is simple. We have made the audios available either simultaneously or right after the argument, I think, 19 times since—in 2000 is it or 2001? And the question is does that actually harm the Court or help the Court or what?

It does make more access. I think in the 19 instances, there hasn't been—I think it is fairly universally felt that hasn't hurt. You have to get the Justices comfortable with the notion of allowing either that or other access, and the reason simply is we are a conservative institution, and we should be. The nine of us didn't invent this institution. We are trustees, and we are trustees for a process that has worked very well in the past in terms of building the confidence of the public in the rule of law. So if we are going to change that process, and any of these things is a change, we have to be made comfortable by understanding that that isn't going to hurt that institution where we temporarily find ourselves. That is why it goes slowly.

Mr. SERRANO. Thank you.

Mrs. Emerson.

SUPREME COURT WEBSITE

Mrs. EMERSON. Thanks, Chairman.

Let me ask you all just a follow-up on the Website. It will cost \$799,000 for the equipment and—is the five personnel, are those people just going to be doing the upgrades on the equipment, or are those five extra people who will be continually working for you all to maintain it on a daily basis?

Justice THOMAS. The latter. They will be staff. They are the security people, the people who—the composition, the individuals who put it together, the administrator. There are people who will actually take the data to interface with the public, those sorts of things. I think they are GS-13s and GS-11s.

Mrs. EMERSON. So, then, for future budgets they would—

Justice BREYER. They would be built in. The one-time cost would be the equipment cost. The continuing costs will be the 400,000 or so that we have committed to their salary and benefits.

Mrs. EMERSON. Okay. Well, I commend you for doing that, because seriously, my own Website is managed outside, and we can't update it fast enough. And so it is very frustrating. So I am pleased that you all are going to be doing this.

I am interested, then, on you all said that the written transcripts are available after—how long does it take to actually get those transcribed and then up on the Web?

Justice BREYER. It is about 3 or 4 hours. It is the same day. It helps us, too. I had the wonderful opportunity to fall on my face one night and was not able to make oral argument the following day as a result of it. In order to stay up to speed on the case and what occurred at oral argument, I simply went to our Website later that day, and it was there. You can do it, and we can do it, or any of us.

The Website is enormously helpful. It is helpful to us internally. I went on last night just to look at it again. These were things we talked about sort of as an aspiration some years ago. It is a reality now. And when you reach a point where you say, I wonder who is the lawyer in this case tomorrow, I hadn't really thought about who is arguing it, you have the briefs, but you—sometimes that changes as to who is arguing it, and you can go right on the Website and you can find out.

If you want the briefs, people who are interested, we receive the briefs in written copy as well as digital, we simply send that to—the digital copy to the ABA, and they put it on their Website, and we link to that. So it is all available, and it is a wonderful, wonderful site, but it needs to come in house.

Mrs. EMERSON. And I don't disagree with that at all.

And I might just segue then to information technology, since we are talking about Websites, and your budget is \$7 million for 2009, I believe. And I was just curious, can you tell us how the Court uses information technology to become more efficient?

INFORMATION TECHNOLOGY

Justice BREYER. Oh, it is in many ways. Let us give you one example. I mean, it is in every aspect from the operation of—our se-

curity operations, personnel operations, our accounts. Finances are now being automated, payroll. There is just no aspect of what we do now that does not interface with the computer. I was away for—at a law school, and each day, early morning, late in the evening, I would check in. You can connect off site through VPNs, and it is—we have double encryption and all the sorts of things that you normally do. And to be able to work 3 or 4 hours in the morning and 3 or 4 hours in the evening after work that is here, you don't have to be on location to do it.

So just the way that we work is different. You are never away. But also something simple. Let us say that you have a lot of prisoners who filed claims. Often times these claims are inadequate. There are mistakes. Now, in the old days we would have to send that back to someone who is incarcerated. Now what we do is simply make those minor corrections, because we can go on the Internet, we can find the case, cite those. Similarly in the capital cases where there are executions, there are filings, that is done electronically now. Those things come up on emergency motions, and we get quite a few of those. And that is done in a very, very quick time frame. So we are able to do that electronically. So those are just a few examples, but it permeates everything we do now.

Mrs. EMERSON. Have you been able over the years to reduce staff or perhaps docket clerks or support staff because of utilization or increased utilization of IT?

Justice THOMAS. I think what we have been able to do is utilize staff better. If you notice, in our budgets we don't come back and add significant staff. As the work increases, or it become more complicated, or we attempt to do more, what you see is we do more, and we do it more effectively and more efficiently.

Mrs. EMERSON. Do you believe that the Court has the program and contract management and technical expertise to successfully implement and maintain your IT systems? And the reason I ask this is because there are other departments within the government who we have given billions of dollars for such upgrades, and we still are not there yet. You are actually asking for such a modest amount in comparison. Do you feel comfortable with your technical expertise and ability to maintain things?

Justice THOMAS. Well, I would actually bet the ranch on the people we have. We built the system. When I arrived at the Court, which seems an eternity ago now, this is my 18th term, we were just setting out the word processors in the hall, and we were at the beginning of it. There was no connectivity, and I mentioned to then-Chief Justice Rehnquist my interest in doing this since we built the infrastructure for our data systems at EEOC, that we needed to get ahead of the curve, that a new era was coming.

He was not interested in it, so he—when you do something like that, that means you volunteered for that committee. So I effectively volunteered for this committee. And we built the system, and if you notice, we have done it in conjunction with this committee. We have had many conversations over the years. We were prodded, we were encouraged, we were supported, and I think that the interaction with this committee is a classic example of how things work, because there were times we might not have focused as much on the Website because we had so much else to do. This committee

thought that was important. So we did the Website, and we worked in conjunction with the committee to get it done. So I am very comfortable with where we are.

Justice BREYER. I think Justice Thomas has done a great job on this, and it has made light years of improvement.

I have to mention one obstacle in any situation. The obstacle in any given situation is normally me. The staff is fabulous, but, I mean, they have to put up with me. I am impatient. I don't take the time to learn the thing, and if I do learn it—and they will make me do it—they spend that 10 or 15 minutes to figure out why I push the wrong button. Now, once we have done that, it works. And I will be on a Sunday working on something in my house I have to get written. So I am sitting there writing, and I push the wrong thing, and I have lost it, and I telephone. Within 15 minutes there is somebody right there who says, now, look, try it this way. Okay? And if necessary, they will come out. So it really does—it is amazing. It really has made a difference.

Mrs. EMERSON. I appreciate that. I would ask perhaps if there is a lull when perhaps you all are not being seated that you might send them over to the U.S. Department of Agriculture. It would be very helpful.

Anyway, thank you very much.

Mr. SERRANO. Did you say you would bet the ranch?

Justice THOMAS. I don't have one.

Mr. SERRANO. I turned to my staff, and I said this Justice just made a safe bet.

Mr. Culberson.

Mr. CULBERSON. Thank you very much, Mr. Chairman.

Justice Thomas, Justice Breyer, delighted to have you here. And I have to tell you, Mr. Chairman, of all the agencies that appear before this committee—excuse me, not agencies—the Supreme Court, the superb job they do as an equal branch of government. You are one of the only folks that I think ever appear before this committee—certainly me as a fiscal conservative, my starting answer is no on all spending requests because of the deficit. I try to avoid spending money, but the request is so reasonable. I mean, this is one where you go whack and just yes. I mean, certainly you have my support.

Mr. SERRANO. Do you mean via rubber stamp?

CAMERAS IN THE COURTROOM

Mr. CULBERSON. Yes, for the Supreme Court, on a funding request this modest, absolutely. On a request this reasonable and appropriate and thoughtful and—yes, certainly you have my support. I think it is eminently reasonable. I am very impressed with the request for the Website.

The work that you will do in every year is so vitally important. The Supreme Court— isn't it true in a very real sense any five Justices can, in essence, amend the United States Constitution? Is that true?

Justice BREYER. We interpret the Constitution. We don't amend it.

Justice THOMAS. Oh, I hope not. Oh, my goodness.

Mr. CULBERSON. In a sense, the opinions you render, however, have the effect of reshaping the Constitution, right?

Justice THOMAS. It has an effect applying that document to changed circumstances and to, in some instances, actually correcting past mistakes.

Mr. CULBERSON. Certainly. No question.

Justice BREYER. Since you gave me the opportunity, I will say this about it: The way I think most of us see it is that document, the Constitution, creates a set of boundaries. They are boundaries, and they are designed to ensure democratic process; to protect human rights; to assure a degree of equality; divide powers, as you know, the three branches, State, Federal; and ensure rule of law. But we are the boundary. You are in the middle. And life at the boundary is sometimes tough. People disagree about those boundaries, and we get tough questions. But nobody disagrees that whatever the right answer is at the boundary, the middle is the democratic system. All right?

So we don't see ourselves as amending the Constitution. We see ourselves as engaging in some very difficult boundary interpretations of the Constitution, and you are quite right when you say if we decide something as to its meaning, then the recourse seems to be a constitutional amendment, which is very hard to bring about.

Mr. CULBERSON. The effect is as profound as though the Constitution were—it is being interpreted, you are right, absolutely.

And I have to tell you how much I admire, Justice Thomas, your focus on the importance of the 10th amendment. I know you are exactly right, Justice Breyer, the Constitution's limitation. And it begins with "We, the people." We all learned from English class the most important parts of the document are the beginning and the end. And the 10th amendment, of course, so vitally important as a limitation. All power not given to the Federal Government is reserved to the States.

And this goes right into the Website question, Mr. Chairman, because the transparency is so important. And my point is what you do is so profoundly important and so vital for the Nation to see and understand what you do. And I am delighted to hear that the transcripts are now available the same day. You are moving into the 21st century.

I think the world has already moved under our feet with the Internet. I think it was Buckminster Fuller once said that Gutenberg made us all readers, and Xerox made us all publishers. Now the Internet has now made us all journalists in a very real sense and opened up the government.

And transparency is so vital that the work that you do, I hope that you will reach the point where you will be able to broadcast the oral arguments of the Court. Once you get your Website up and running, it is a very simple matter to transmit live on the Internet, and I hope you will seriously consider doing so to allow the public to see the actual oral argument on the Website.

Have you all discussed that? And what is the potential for allowing—because there is no logical distinction between the audience in the room and the audience in the country out there.

Justice THOMAS. Well, we have discussed it and discussed it and discussed it. I think there is some disagreement on that. Justice

Breyer said earlier that the Court is a place that resists change. One example of that was some years ago Chief Justice Burger decided that fluorescent light bulbs would be a good thing for the Court, and he installed them in various rooms around the Court. One member of the Court who had been there for quite some time commented to him in a somewhat less than supportive manner, all these changes. That is the reaction in many ways.

I think what Justice Breyer said, in seriousness, is correct. We are just there. I am the 106th member of the Court, and you recognize after a while that you are small compared to the institution and to the document and to the rest of the country. And any time you make a change, you think twice about it. Well, more than twice. You are very, very concerned that you are changing something that will affect the institution.

One of the things that has impressed me about this institution, and having met great members of the Court such as Marshall, Brennan, White, Blackmun, Burger, toward the end of their tenure—Justice Powell—that they all felt much smaller than the institution; that no one of them at any time would say to you, do your job this way or that way, and that none felt that he was responsible for changing the institution. If anything, they all exhibited a certain sense of humility.

So I make that point to say this: I think among the individual members you find no one who will aggressively push something that changes the institution in a way that will result in some diminishment of the institution. So if, to them, it could be shown that this will enhance the institution, that it will enhance the country, enhance the process, I think you will have the members who—they would support it. But if—and we have our doubts—they think it will diminish the institution and diminish the process and actually harm it for the country, they are reluctant.

So there is some discussion. It has actually been quite a bit of discussion about that, particularly since this legislation introduced to do precisely that, to broadcast the Court's oral arguments. But it still had, from our standpoint, some disagreement about it.

Mr. CULBERSON. And you would be controlling the Website, which I think is important, Mr. Chairman, that the Court have for security reasons, for accuracy of the pleadings, for accuracy of the documents, to make sure that amendments can be made quickly, if you are in control of the Website and can control the input, the output, what is being broadcast and what is not. And again, I would really encourage you to do it. It is, I think, a vitally important part of the role of the Court that the public understand what you do and remove some of the mystery that this great institution and the work that you do be made accessible. And it is actually very, very simple. In fact, Mr. Chairman, with your permission, may I demonstrate very quickly?

Mr. SERRANO. Absolutely.

Mr. CULBERSON. I actually—

Justice THOMAS. You are not going to YouTube us, are you?

Mr. CULBERSON. Not without your permission. I actually love technology, and I think I was the first elected official in the country in January 1987, when I was a freshman in the Texas House, I used a Macintosh, leased a computer to set up a bulletin board and

communicated with my constituents. And this is a very simple service.

With your permission, Mr. Chairman—

Mr. SERRANO. I wonder what I am agreeing to.

Mr. CULBERSON. I am showing how easy it is to broadcast live on the Internet. We are now broadcasting live on my Website. This is a service called quik.com. This is a public hearing, and we are—in the 21st century, it is so important that the government be absolutely transparent and that people be able to see what we are doing.

Mr. SERRANO. In that case, let your constituency see what a liberal looks like.

Mr. CULBERSON. What a good man you are. And what a good man you are.

But I just wanted to demonstrate, Justice Thomas and Justice Breyer, that really in this age of full transparency and availability of this technology to everyone, that the government should indeed be transparent. It is easy to make it transparent.

And I will shut it off. This is actually broadcasting live instantaneously on my Website. This is a way for all of us as Representatives—I think for the Court also—to make yourselves completely transparent to the public. It is that simple.

Now I will shut it off.

Mrs. EMERSON. Now, you will have to let us know how many hits you got.

Mr. CULBERSON. Actually this is a great service. It is easy to do. And what I want to leave up, I hope that the country will evolve. It is wonderful technology, and I know your commitment to transparency, the leadership's commitment to transparency. We had a little disagreement. I, for example, would like us to make sure that bills are actually posted on the Internet for 72 hours as the House rules require. That has not always happened. Or, as the new President has promised, that bills be posted for 5 days before he signs them. That hasn't happened.

But, see, the beauty of this system is, Mr. Chairman—in conclusion, if I could have about a minute and a half to wrap up—is that the Internet will, I think, help the—we have, I hope, moved beyond the days where people used violence to overthrow the government. We can use bullets and electrons to change the government. And I think really the next American Revolution is going to come through the Internet in allowing the government to be completely transparent.

I hope we reach the day, and I encourage you to go back and read my hero, Thomas Jefferson, his favorite letter—the best letter I ever think he wrote that explained his vision was a letter he wrote to Joseph Cable in February 1816. And it wasn't possible, Mr. Jefferson wasn't able to achieve it in his day, but he talked about—and, Mr. Chairman, you are very gracious, but this is important. This is the only reason I am here in Congress. Mr. Jefferson wrote in that letter, Justice Thomas and Justice Breyer, that it was his dream for the country that each individual American would be able to participate so completely in their government, that, as he said in the letter, they would rather have their heart torn from their chest than lose that participation to a Bonaparte.

And he used as the example the New England town hall meetings where when he as President used an economic weapon, the embargo, for the first time in history. The entire country supported the embargo, he said, but this tiny minority in New England opposed it. And he said, it was as though the Earth had moved under my feet because this tiny minority was so well organized, was so—their local townships, their town councils, the locally elected representatives, the Governor, the Congressman from New England worked in unison to fight the embargo, and they overturned it.

We are not really a democracy, Justice Breyer. We are a republic. And if the Republic is going to work the way it is intended—if you read Mr. Jefferson's letter, he envisioned that we would subdivide the country into elementary republics, all the way down to the county and township level, where each individual American would control everything that they could see and touch.

And what I am driving at ultimately is I think the Internet gives us that ability for the first time, that free Americans—we are all now so—it is possible for each one of us to see what a good man you are, Mr. Chairman, and I mean that sincerely. We have our philosophical disagreements, but you are a good man with a good heart, and you do your best for the people of New York, as I do. And if people can see and hear what we do, it strengthens the institution, Justice Thomas, as the United States Senate and the Congress were strengthened when C-SPAN opened up to broadcast live.

C-SPAN is now in the 30th year that they have broadcast live. The Senate went through much of the same debate about whether or not it strengthened or diminished the institution. And since your opinions can change the course of American history, and any five of you at any given time can reshape the future of the American Republic, I would encourage you to break down that wall. It is as easy as me pushing this button.

And that is where the next American Revolution is going to come is when we, the people, truly can see and hear how the sausage is made here, Mr. Chairman. I think we will see those tea parties that were such an—I think a very important reflection of a deep-seated fear, need for that fear. If we can see and understand what our government is doing, then we, the people, take back control of it and give that 10th amendment real meaning again and put each of us in control of our lives, our freedom, our prosperity.

So I would encourage you to break down the walls. It is as easy as pushing this button. When you get that Website up and running, broadcast those oral arguments and let the people see what wonderful work that you do. And I think you would strengthen the Republic.

Justice BREYER. That is a very, very good point. I think I like the technology.

I think I would make two points that I think are important. One is the judiciary is much more transparent than people normally realize. Our work is done in public. The work consists of reading the briefs, listening to some oral argument, which is about 2 percent of the matter, and writing opinions that describe our real reasons for reaching the conclusions that we do. And the reason that people don't necessarily know all that much about it is unfortunate, but

much of the reason lies not in the fact that the briefs are where the work is, not in the fact that they are not public, but rather for most people they are boring. Now, judges don't find them boring, but a lot of people don't want to go read it. That is why the reporters read them and report.

The true problem with oral argument is this, in my opinion: On the one hand, of course, it would help people see how in some of these difficult issues we struggle with them, as do you. But on the other hand, we worry about one more symbol. If we suddenly had it in there as an oral argument, would it be in every criminal proceeding in the United States? Would it be? And if it would, what about the witnesses? What about the jurors? There are problems there. And, you know, people relate to people, and would they know that this is 2 percent of the matter, what they are seeing, and would they, in fact, understand that most of what we do does not involve the two people in front of us, the lawyers on either side. It involves the 300 million people who are not there physically in the courtroom.

Now, maybe the answer to that is the gains are worth the risks, or maybe the answer is the risks are not, are such it is not worth the gain.

So what I have always said, which I am happy to repeat, is I would like to know more of what I am doing, and there are ways of finding out. You can do serious social science research. I know that is sort of a bad word in a lot of places, but there is such a thing, and it can be unbiased, and you can find out how it shapes attitudes, and you can find out whether or not having that television in that oral proceeding does or does not make a difference. What, will it help people understand what is going on, or will it make matters worse in terms of their understanding? It is an open proceeding, you are right.

Now, all of those are questions, and my own view is you have to be very careful about proceeding on this until you know a few answers.

Mr. CULBERSON. Thank you, Mr. Chairman, for allowing me to go a little bit beyond my time.

Mr. SERRANO. Thank you.

I think your points are well taken. We are living in a new era, and we have to understand what the ramifications of that is. I think we all agree, most of us agree, that we want to get as much information out as possible. You know, I represent the poorest district in the Nation and all that that entails in terms of technology. Ironically it is within walking distance of the wealthiest district in the Nation, and it sits within the richest city on Earth, in the Bronx, New York, and all the contradictions that entails. And I am constantly trying to figure out with that particular constituency how to get my message out. And my message simply meaning they should know what I am doing, and the Internet is the way to go. It is everything from Facebook to your Website to the fact that I am now hearing little tweets on my—

Mr. CULBERSON. I am trying to make it go away.

Mr. SERRANO. But, you know, it is the way to go, and your comments are well taken. It is an institution that has been around before many of us. It is one institution that has made changes in the

country and our society, but maybe has resisted changes as to how it reaches those conclusions to make those changes. We understand that. And the whole idea is that I think in many cases that train left the station already.

When you see how this President was elected, and you realize that there were a couple of candidates who were sure that they were going to be the next President, and he went to kids and computers and websites in places where he was not supposed to even visit, some people thought, because he wasn't going to pick up any votes, and the next thing you know, the bandwagon started rolling. You know, a President gets elected, and the right thing to say and the right thing to know is that you owe your election to everybody. But let us understand that in Iowa and those first places, it was all college kids on the Internet carrying the message, and that was a revolution.

So it is a revolution. It is a new day, and everybody has to understand what role we play in that new day. Of all the things you said, and I am glad you said it on the record, on tape, to hear you say that you are a revolutionary is the best thing.

Mr. CULBERSON. I am. I am a Jeffersonian revolutionary.

Mr. SERRANO. I understand.

MINORITY LAW CLERKS

But let me go to my next question, which really fits into this. If this is a new day, if this is a new time, then we have to make sure that as many people as possible share in it. And one of the issues that I speak about, as you know, Justice Thomas, every year is what progress is being made in increasing the representation of minorities within the ranks of law clerks and other professional staff in the Court.

Although the situation is improving, minorities are still significantly underrepresented in the legal profession. Further, it appears that minorities are even more underrepresented in the clerkships in the high-level courts that are so important to future legal careers, whether in private practice or in public service.

When we had our general hearing on the Judiciary budget last month, I asked the question for the hearing record about minority representation among law clerks in the Federal appellate and district courts. While the statistics are no doubt an improvement over previous decades, they still leave a long way to go. For example, while African Americans represent about 14 percent of the population and about 7 percent of current law students, they account for only about 3 percent of law clerks at the Federal appeals court and only about 4 percent at the district court level. As for Hispanics, they represent about 15 percent of the population, 6 percent of current law students, and 2 or 3 percent respectively of law clerks at the courts of appeals and the district courts.

Do you know if the Supreme Court maintains similar statistics about the representation of minorities among its law clerks and among the Court staff? And second, are there any special steps that the Court has taken to increase the number of minority law clerks and professional staff, outreach to law schools or to minority law students or bar association, for example?

Justice THOMAS. Well, over the years, Mr. Chairman, you and I have discussed this. The Court has 36 law clerks, and there are currently 36 law clerks there. And I believe, if my memory serves me correct or properly, 13 are women, at least identified from the—we don't keep statistics. And I really can't say I focus on it very much except when I come to this hearing. Thirteen are women, and I think four or so are minorities. Last year I think six or seven were minorities—

Justice THOMAS [continuing]. Just judging from our photos in our materials at work.

With respect to the numbers, as I have said in the past, we receive what the law schools prepare. We hire from—I tend to have a very broad net. I hire from quite a few law schools. Others tend to hire from a more narrow or narrower band than I do. But we take the kids from the law schools. We hire from a certain portion of that law school population. That is important because the way that we work there is no start-up time. You hit the ground running and you are ready to go, and I am not Mr. Nice guy with my law clerks. I want things done; you have to be ready to do it.

I think each of us has had minority law clerks with whom we were very satisfied and done outstanding jobs, but they are not—there is not a plethora coming from the band that we select from in law schools. It is as simple as that.

I think in your statistics, it might help us, and I think be more reflective, if you look at where we get law clerks. And you have been encouraging us to broaden that, and I think the Court has done that. But I do believe that the numbers that we have and that you see in the judiciary are reflective of what is in the law schools, at least in the population that we pull from. I would like to see it increase, but it is the reality.

Justice BREYER. I think if I can add one thing, Mr. Chairman, change is important here. I have had far more than 10 percent, I think minority, far more. And on the African-American side, far more than the 7 percent I am sure because I can think of them in my own mind. And I don't know about the Hispanic population, probably closer to the law school population. But I know my own.

But taking this, when I started I made an effort, all right? Now, 15 years ago you had to make an effort. 15 years ago it required what I called outreach, a conscious outreach. And that means you go around and look where you get your sources and so forth.

Today, it does not take that. It just does not take it. There is no problem that I see. I get plenty of applicants. I don't have to make the outreach to find good applicants, and once I find the good applicants they appear on the staff.

Mr. SERRANO. Well, I have always found it sort of tricky suggesting to the Court, Justice Thomas and Breyer, that I understand that you have a pool from which you select. And traditionally what I have heard from the court is from that pool we don't see as many minority candidates—but that is what I always read between the lines—as we do from other places. But then maybe you should expand your pool. I mean, the reason that there are so many Asian and Dominican baseball players now is because the major leagues went out and looked in other places other than around the neighborhood.

But here is my point, and again it is a very delicate thing for me because I have tremendous respect for the Court. But there are these institutions in our country that are just incredibly important and good, and the more diversified they are, not only in its membership but in who is behind the scenes doing the work, the better it is for the country. This is not a numbers thing. You know. I could easily as a Hispanic Member of Congress hire only Hispanics. I choose not to do that. I am in some ways blind to that also because I want the best qualified people, but I also want a message to go out to people that if you elect someone like me, you are not going to be left out.

Well, the Court I think—all courts should be able to send a message that all are welcome to participate at some level.

Justice BREYER. I agree with you. And my point really is that the pool that I draw from in any case has not really, it seems to me, in later years had this problem. That is, just look at who is there. And everybody is there. And everybody is there. Go look at the pool today, my pool, and look at it compared to what it was. And my goodness, it is not just comparative. That change is there. And you say continue doing this, and I agree.

Justice THOMAS. I agree with Justice Breyer. I just don't make these arbitrary distinctions. I have a broad net. And whoever shows up shows up. Some clerks have shown up, I had no idea what their ethnicity was. I mean they may have told me in subsequent conversations during their clerkship. But it is just by casting a wider net.

But the net always includes the best kids, kids who are academically and by their preparation in a position to do the work. I have never had a problem.

Now, I think we should narrow, as I have said in the past, Mr. Chairman, what we are talking about. The numbers if we are looking at individuals who are Asian, we have large numbers of whether they are Asian or Indian. And again I don't like these categories. But that is not a problem. We are talking about black and Hispanic. Those are the numbers that you are really talking, those are the two categories that you are really talking about. The Asian population simply is not a problem.

Mr. SERRANO. Well, I am talking about all numbers. Those are the numbers that always come up. But look, I think I have made my point throughout the years, and I think you have made your point throughout the years—the Court has made its point throughout the years, and maybe when the Court says that it finds difficulty in change, maybe that is the area where it finds the most difficulty in change. But that is something that will evolve hopefully as we push for more folks to go to law school and to prepare for the profession and to be available.

It still troubles me somewhat, but it even troubles me having to bring it up because it is a delicate subject. But it is one that I could not avoid, else I would not be honest to myself or to this chairmanship or to why I happen to be here in this moment in history.

Justice THOMAS. I don't think that that is an area, Mr. Chairman, where the Court has been resistant to change. We may be more resistant to the cameras, but not to that. I think that the members of the Court to a very great extent have bent over back-

wards making an effort. Now, you may not agree with the result, but I think that your questions have not fallen on deaf ears. Your concerns have not been ignored.

And I agree with Justice Breyer, I don't have all of these problems. I think it is—I agree with what you say, you want to say to people: You are welcome here. You have a shot. Whether you are at Rutgers or whether you are at Harvard. You have a shot. Whether you are from the Bronx or you are from Westchester County. And that message has been sent. And I think I would not, if I were you, be frustrated. I think you have been effective in making that point. Not one that you have to hire a certain percentage, but that all are welcome to give it a shot.

Mr. SERRANO. Thank you. And for the record we sometimes speak to who is before us and we are also speaking to a lot of people that are not before us. It is across the Judiciary that there is this concern, not only in the Supreme Court.

SUPREME COURT WORKLOAD

Let's talk briefly about caseload, which we have also discussed over the years. Statistics the Court includes with its annual budget submission show the trend basically continuing of a lower caseload. For the term that was completed last summer the Court heard arguments and issued opinions on 72 cases compared to 160 cases 20 years earlier.

Are there any thoughts you want to share as to the reason for this trend? Is it something we should be concerned about? One would argue that the less things that come before the Supreme Court, the better things are. Everybody is happy.

Since most of the Supreme Court caseload is under its control, is this decline because the Court is becoming more discriminating in the cases it takes or are there just fewer cases that require Supreme Court review?

Justice THOMAS. We have asked ourselves that question over the years. When I first arrived at the Court I think we were at about 120. So I tend to think between 100 and 120 is a good number. I think much above that is too much. The Court never made a conscious effort to reduce those numbers. And I don't think the Court has been particularly parsimonious in exercising its discretionary jurisdiction.

I think the answer is the cases simply are not there. Most of our jurisdiction is discretionary. If we have erred in any way, it has been in those instances when we have granted cert in cases that should not have been there, and then we would have to dismiss them as improvidently granted. But the Court has not limited—or intentionally limited the number of cases.

But that is not the only thing we do. We still get the 8,000 to 10,000 cert petitions that we have to deal with. There is always work to do. There is always the capital cases, the emergency motions. But with the argued cases, that decline is at this point inexplicable. I think we have tried to pinpoint the reasons. I may have speculative justifications for it or reasons for it, but it is nothing more than my speculation.

Mr. SERRANO. And just be clear that I was not suggesting that you should have more work. You are busy enough. In fact, there

are some who want less government and others who want less court decisions. So it works both ways. Thank you.

Justice BREYER. I agree with Justice Thomas. Justice O'Connor used to sit at the table and she would say we have space on our docket and we are looking for cases to take rather than the contrary. I have my own subjective views as to why this has come about.

Mr. SERRANO. Mr. Crenshaw.

Mr. CRENSHAW. Thank you, thank you, Mr. Chairman. And I apologize to you all. It is interesting, I know that you are dealing with a lot of issues that affect our country. I just came from—the reason I was late, Secretary of State Clinton was testifying and you listen to what is going on around the world and probably be glad you are on the Supreme Court. But I am sure it is tough there as well.

And again I apologize, but I think somebody asked a question, I read or was encouraged that all the grounds and all those architectural components are kind of on track and actually did I read correctly it said that the requests are less than last year. I guess that is good. You don't find any agencies coming in and requesting less money than they did the year before. So it sounds like the buildings are on track, within budget, et cetera. That is encouraging.

I was curious about moving—and maybe somebody asked about it—moving the Web site in-house. Does that save money or just make it more efficient? Or what is the purpose of that? Is it more timely? What is the reason for moving it in-house?

SUPREME COURT WEBSITE

Justice THOMAS. Well, all of the above. As we discussed earlier, it does save money for us. Certainly it will reduce the expenditures at GPO. And for us, it saves not only time for us in-house in moving it, getting information to them, correcting errors, but it gives us control to make it more timely, to make it more responsive, to make it more interactive, to begin to uplink things like videos or materials that we think should be on it. In other words, to make the Court more accessible.

This is the last piece of a large puzzle that we have been working on for more than a decade now. It is an important piece. But it has to be in-house.

We are almost there. We have the infrastructure—we have about one-half, we have 45 percent of the infrastructure in-house now because we prepare it for GPO to put it on the Web site. So 50 percent that we are bringing in is the rest of it. It gives us more control and it is an important piece.

Mr. CRENSHAW. It doesn't cost any more money to bring it in-house? Part of that money is just to do a better job of having it available?

Justice THOMAS. Well, it costs a little more because we have to bring—300,000 or so for the equipment, which is nonrecurring, and five people to do the work. But the advantage is this. It is not being done by GPO and we are doing a lot of the work now anyway. It also gives us control. I mean you have security problems. You have

problems with errors. You have problems with timeliness that we get to correct in-house.

Mr. CRENSHAW. I get you. And I am sure you all talked about this before, but if the reason is to make the Court more accessible, more open and more transparent. The next step obviously is to televise all the hearings. And I imagine you have talked about that over the years. If you haven't talked about it already, I would be curious just what goes into that decision.

On the one hand you say we want people to have more openness and access. Why do you stop there in terms of transparency? The next step would obviously just be to, like the floor of the House and the Senate, and C-SPAN is there, et cetera. I don't want to—if you have already answered that question, but I would be interested in just knowing what the theory is.

CAMERAS IN THE COURTROOM

Justice THOMAS. Congressman Culberson has made an impassioned plea for that and an impassioned case for that and has shown us how small the cameras can be. But as we indicated, the Court is reluctant to change the institution without knowing what the effect of opening the institution further will be on the institution, whether it will somehow harm it or whether it will enhance our processes. We don't know. There is constant discussion about that. But there is some disagreement. And I am trying to in a general way represent all the views that are at the Court, because there are strong views and there are views in the middle. There are strong views on the poles and there are significant views in the middle.

So in representing all of them, it is something that the members of the Court are all concerned about and hopefully that the institution will not be harmed if we go one way or the other.

We also discuss it in the context that there is pending legislation on this. But we don't all agree, but no one is resisting it just for the sake of resisting it.

Mr. CRENSHAW. Thank you very much. And just finally, I would say that I am from Jacksonville, Florida, and I know some friends of mine that travel around the country in motor coaches with you. So if you ever come back to Jacksonville feel free to stop by.

Justice THOMAS. I am going to run through there in a few months, over on I-10.

Mr. CRENSHAW. Yes, great.

Justice THOMAS. I have lots of friends down there. You must be somehow conflicted because you are Georgia and Florida, aren't you?

Mr. CRENSHAW. Actually I went to the University of Georgia and I went to the University of Florida, and a lot of people say you always knew some day you were going to be in politics so you were covering yourself for the big Georgia-Florida game in Jacksonville, and I of course say that is absolutely not true. But I am taking a correspondence course at FSU.

Thank you, sir.

Mr. SERRANO. Well, we go from one Florida member to another Florida member. Mr. Boyd.

Mr. BOYD. Thank you, Mr. Chairman. And Justice Thomas, Justice Breyer, thank you for being here and for your service. And unlike Congressman Crenshaw, I didn't go to Georgia. I only went to the University of Florida and I want to remind him that today over at the Library of Congress they are honoring the 2009 national football champions. That is the University of Florida Gators, Mr. Crenshaw. So you could probably upgrade yourself by going and taking a correspondence course at FSU, too.

Mr. SERRANO. Take Spanish while you are at it.

Mr. BOYD. Thank you, gentlemen, and thank you for your fiscally conservative request. I know these are very, very tough times. And I know to present that, to put that together you had to turn down some things or cross out some things. And I apologize for being late, but I understand that has not been talked about. Could you briefly talk about that?

FUTURE REQUESTS

Justice THOMAS. Well, some things have to be put aside. I think that we would perhaps at some point in the future want to come back and discuss some more security issues. Particularly our police force and with the new security requirements and the pressures on us now, I think we may be back on that.

But we understand that we cannot have, even if it is just several positions, these are difficult times. So our effort was to choose something that at this time needed to be done to finalize our Website because we are at crossroads. We have to decide whether to upgrade what we have at GPO or bring it in-house. And what we do now will be our decision certainly for the next decade or so.

But yes, there are things that we did not put before this committee. Security is one of them.

Mr. BOYD. Thank you. Thank you, Mr. Chairman. That is all I have.

Mr. SERRANO. Ms. Emerson.

PERIMETER SECURITY

Mrs. EMERSON. Speaking of security, let me ask you a few questions about that or is that something you would prefer to talk about at a different time? Okay.

Obviously given the dangers of terrorism and your all's high profile and the building itself, security ought to be a top priority in your budget. And I know that you are requesting 3 million for perimeter security along Maryland Avenue and Second Street. And I also understand that you have a hundred or more than 100 Supreme Court police officers. So I would like to know, one, how the 3 million requested for the perimeter security, how you feel that will improve the security of the Court, and I would also like to know whether or not the opening of the Capitol Visitor Center has actually had an impact on the way that you all—your visitor screening processes, and then why you all have police that are just for the Supreme Court versus using the Capitol Police. Curious about that.

Justice THOMAS. This is the first I have been asked about the latter. It is certainly not because we are provincial in that sense or we have to be—it is part of our history. I would have to go back

and look at the history of that. But with respect to the security, the Maryland Avenue perimeter is a part of the ongoing security development. That is last or among the last changes from a security standpoint. We have done the south side—I think the east side of the building, we have done the west side, but we have ongoing construction on the north side. But that has always been a part. This is just one phase of the perimeter security, and that of course has been planned for quite some time.

With respect to the—I think your overall question has to do with whether or not we think it is adequate. I do think that we have upgraded our security over the years. This is even before 9/11. We began upgrading our police force to essentially bring it in line with the Capitol Police force and to coordinate with Capitol. After 9/11, of course, we all became very concerned about security, and that concern continues, and we may well be before this committee to discuss in more detail some of our specific security issues in the next budget cycle.

Justice BREYER. I asked Marshal Talkin and I know she said the Capitol Visitor Center has increased by 100,000 the number of visitors. That is her estimate, a guess really. We get 500,000 or so a year, and I think probably the number would be higher were all this construction not going on. So I am looking forward to that. I think the more the better. And the place is open and it should be open to people, and the more that come in and see it, it is their building, it is not ours, and the more that come in, the better.

BUILDING MODERNIZATION

Mrs. EMERSON. And with regard to the modernization, Justice Thomas, you said at beginning of your remarks that the overruns were on the front end of the process. Do you feel comfortable with the existing resources that you have been allocated to complete everything?

Justice THOMAS. We are actually under budget. And this committee has been very accommodating throughout the process. And so from a time standpoint we are late, a year and a half late. But that problem occurred early on. From the standpoint of the budget, we are under budget and hopefully the project, just as the building did back in 1935, will come in under budget. But as it appears now it will come in under budget.

Mrs. EMERSON. Shockingly. That is wonderful to hear and perhaps sets a good example for some other ongoing projects that we have to deal with. But fortunately that is not your problem.

Have you all had—I mean, this is a touchy subject, but I raise it. Have you all had a good working relationship with the Architect of the Capitol over the course of this project?

Justice THOMAS. I think we have worked well with the Architect of the Capitol. It has worked out. I have never worked with him, but based on what I heard, it is a relationship that has functioned fairly well throughout some very, very difficult projects.

Mrs. EMERSON. I appreciate that, thank you. Thanks, Mr. Chairman.

Mr. SERRANO. Thank you. Ms. Lee.

Ms. LEE. Thank you, Mr. Chairman. I apologize for being late. Several committees at one time, but it is good to see you both.

Let me just follow up and say I was vice chair of Leg Branch during the construction of the Capitol Visitors Center for a large portion of that. I am glad to hear you say you are under budget, and also say that the Architect of the Capitol, Mr. Ayers, and the team did a fine job in bringing it to its final conclusion. Final conclusion.

STUDENT LOAN PAYMENTS

So let me ask you, and I briefly perused your testimony and I didn't see anything about an initiative or program that helps employees pay their student loans. When I first came to Congress, boy, 11 years ago, I worked on a student loan repayment benefit for employees because of course our employees work day and night, night and day, salaries really are not comparable to the private sector, and so we thought this would be a good benefit. And we included that in the budget for that. And I am wondering if the Supreme Court has any type of a student loan repayment program that is similar to the House staff benefit package for student loans.

Justice THOMAS. Well, primarily we looked into that several years ago, and I cannot remember exactly what became of that. But the individuals who would most use this would be law clerks, and for the most part the law clerks are in a financially substantial position after they leave. And by that I mean financially substantial. Unlike most staffers who stay on as a part of their career and may or may not after their clerkship, for the most part, some teach, some go into public interests, some go into government, but those who go into the private sector receive significant bonuses and salaries.

Ms. LEE. Okay. And so support staff, you don't have a large percentage of staff members who are support staff who would be researchers or—

Justice THOMAS. I don't think so. I think for the most part I have had a number of my staffers who have gone to night law school but they have worked and paid as they have gone along the way and they didn't have substantial indebtedness. Maybe some, but not \$150,000, \$200,000 as some of those kids have.

Justice BREYER. I can add, I would like to add that I do encourage my clerks when they leave the Court, I would like to see a lot of them go into public service. And they have plenty of opportunity in the private sector, believe me. But it stays there and to spend a period of time in public service is fabulous, and so I think if your program throughout the government or wherever you put it can encourage those law students and those graduates, recent graduates, including our clerks, to go into public service, I think that is wonderful.

Ms. LEE. Well, I think this is a benefit for our congressional staffers after they leave. And finally, let me say I understand you went through the diversity question because I too of course have many of the same concerns in terms of diversity, hiring and making sure that the Supreme Court reflects the numbers that we should see in terms of diversity.

You got that information, Mr. Chair? Right? Okay. I will be talking to the chairman about it. Thank you very much, good to meet both of you.

Mr. SERRANO. Mr. Culberson.

COURTHOUSE LEASES

Mr. CULBERSON. Thank you, Mr. Chairman. I wanted to ask if I could about the workload that the courts are having to deal with at the District Court level, the Appellate Court level. Certainly your workload has just increased dramatically. And just give you an open-ended opportunity to talk to us about what we could do in Congress, the Appropriations Committee, to help ease some of that burden. I know one chokepoint, certainly courthouse space is a terrible problem, one of the most expensive things we build because of the security requirements. One suggestion I would throw out, for example, Harris County government has the ability—has got very good bonding authority, do a good job of building new structures, and I have not seen courts lease courthouse space from local government. I don't know that that has been done before. But certainly it is something we should consider.

So I wanted to ask you, if I could, both of you, Justice Breyer and Justice Thomas, if you could offer us your thoughts on what the Congress could and should do to help ease the burden when it comes to the workload. Are there a couple of areas that you would recommend that we should look at in particular?

Justice THOMAS. I think the Chief Justice's year-end report covers most of that, and his point there is that we are trying to do more with less, and I am not going to undercut that by making any personal suggestions. But the only point that he was concerned about, or his major point of concern was this: Even in light of making the cuts and doing more with less, his concern was again the retention of judges, the fact that we still have the pay issue. That is the elephant in the room. And it is one of continuing concern, particularly the District and Court of Appeals level.

But beyond that, I am not going to undercut his recommendations. And again the workload issue depends on where you are. I think what we have is manageable, is fine. But if you are at the Central District of Florida, that is a very intense and high volume area. So I am not going to suggest anything for them. I think that if I were—I am the circuit justice for that area. I would actually like to see them have more. I would like to see some of the cuts go away so that they can be more flexible with staff, but the circumstances are not such that we can do that.

Mr. CULBERSON. Do the courts have the authority now under existing statutes to contract with local governments?

Justice THOMAS. I don't know. I don't know.

Mr. CULBERSON. I am sorry, Justice Breyer, did you want to add anything?

Justice BREYER. If you are saying what could Congress do, I don't have short run suggestions but I do have longer run suggestions. One is if you do have a judge, you do have to have a courtroom. And in Los Angeles there is a big hole in the ground because the money was not appropriated to build the courthouse. I was in Hawaii and the Federal courthouse that was built there, a quarter of it, in my estimate, is closed because when it rains it rains more inside that courthouse than it rains outside.

These, I add, are very good stimulus projects in place and they end. They end when it is built. There is a second thing, and the

second thing is simply this. I hope that when you look at things, as I am sure you do, I hope you look at the longer run. For example, it is very hard for the courts to get through in their budget things like pretrial services and supervision and probation, and so forth, but if you are worried about a crime problem, quite often it saves you money to take that person on the drug charge and to run him through pretrial services than to put him in a prison and keep them there for 20 or 30 years. So in the long run a lot of these things if you look at them in the long run, I believe you will find in the long run they save money.

Mr. CULBERSON. And reducing crime, the certainty of swift and sure punishment has a terrific effect on reducing caseload, and I can testify to that personally, Mr. Chairman. In the Del Rio sector on the border and the Laredo sector, with my colleagues Henry Cuellar and Ciro Rodriguez, we very successfully implemented a program called Operation Streamline, which is a zero tolerance program where anyone—and our Secretary of Homeland Security apparently doesn't understand it really is a criminal offense to cross the border illegally. But if they cross the border in the Del Rio or Laredo sector, they are prosecuted, using good judgment of course obviously, but there are existing laws up to 6 months. They are incarcerated for a few days up to 6 months and then deported, and the result is there is actually vacancies in the Val Verde County jail. There are vacancies and the crime rate has dropped 70 percent in the Del Rio sector and over 60 percent in the Laredo sector, which was one of the most dangerous sectors. And this is bipartisan, the local community supports it. This is something that we worked on together. It works beautifully. So don't forget swift and sure punishment also works, with a compassionate heart because we do need to fix the visa system as well. And you trust officers to use their good judgment.

But the courthouse question, if I could very briefly, Mr. Chairman, I would encourage the committee and the Congress should look at. As you mentioned, Justice Breyer, in Los Angeles there is a hole in the ground and in Hawaii the building leaks. I don't think it is permissible for the courts to contract with local government to lease courthouse space, but it is certainly something we should consider. I am confident in California and Florida, New York, Missouri, certainly in Texas our local governments build first class facilities and the Harris County government I know is ready, willing and able to build a new courthouse for the Federal courthouse in Houston which was built in the 1950s. They could build it quickly with bonding authority and then lease it to the Federal judiciary and I think solve that problem for you very, very quickly.

And then finally, I do hope you will not wait to do a big social science study, comprehensive as to whether or not you should broadcast on the Internet. Trust your heart and your instincts. I hope you on the Court will just make the decision—I am frankly not sure—I see that Congressman Poe has filed legislation to allow broadcast of the Supreme Court's oral arguments. I hope the Congress would not impose that on you, you should do it of your own free will, but would such a statute be valid? I mean, isn't that an internal proceeding of the Court?

You can't I guess even speculate, but I hope it is something that you will do of your free will. Don't wait for a social science study. Remember the tea parties on April 15th. The country is fed up. Let's just open the doors and let the sun shine in and trust the judgment and good sense of the American people.

Thank you.

Mr. SERRANO. It only took him two rounds to mention immigrants. He usually does it on the first round of questioning. The country is not fed up.

Mr. CULBERSON. With taxes and spending they are fed up.

Mr. SERRANO. Trust me, the country isn't fed up. Just some folks from TV are going out and starting parties all over the place.

Mr. Boyd.

Mr. BOYD. Thank you, Mr. Chairman. I know that Mr. Culberson's point was about facilities, specifically courthouses. I guess your specific question, Mr. Culberson, was could they contract with local governments? I know you can contract with other entities, private folks who can lease back; is that correct?

Justice THOMAS. I don't know. Why I am reluctant, Congressman, is that that is something that is within the jurisdiction of the AO. The Administrative Office of the Courts, and I am reluctant to comment on something that I have no authority over.

Justice BREYER. The Chief Justice I think has spoken about this, and I know the Judicial Conference has views on it, and there is a continuous tussle here with the GAO. We pay a lot of rent. The court system pays a huge amount of rent to the GSA, and there is always a big argument about that and some people feel the judiciary could lower the rent maybe a little, and some people feel the opposite. So we are not in the midst of that problem here. We are not. We are not experts on that.

Mr. BOYD. I am talking about out in the country, your fellow courts, many of your courthouses are leased.

Justice BREYER. GSA has leased space. Yes.

Mr. BOYD. Would either one of you be willing to or feel comfortable talking about what Congress can do to make this better? And here is my question: ultimately, you guys put forth a facility needs request. That comes to Congress, and Congress makes those decisions about which ones get funded and which ones don't ultimately. And I ask this question because I have been involved in trying to fix a very inadequate courthouse facility in the Northern Florida District. And we have been working for years to see what could be done or couldn't be done, and so I have learned a little bit about what Congress does and doesn't do. Would either one of you be willing to talk here to the committee today how we might better that process to more efficiently use the funds and appropriate the funds that we do have?

Justice BREYER. I can't specifically, but when I was on the Court of Appeals we built a new courthouse in Boston. I got very much involved in this process and very much involved with GSA, and I know that there is tension and I know that we have a committee, the Space and Facilities Committee in the Judicial Conference, that has a set of recommendations. And that is going through the Executive Committee, approved by the Judicial Conference, and I think that there are lots of things that could be done. So my suggestion

now because I am so out of touch with this because it doesn't come into my life now, is if you are interested in that, which I am glad you are, that you get your staff to get ahold of those reports and go to the Judicial Conference or the Administrative Office with Jim Duff, and I am sure he could present the judiciary side of that.

Justice THOMAS. I think you would profit more from working with Jim Duff, who heads the Administrative Office of the Courts. I have not been a chief judge as Justice Breyer has and built a courthouse, but I think you would get a better sense of the priorities of the various courthouses and the construction projects that are ongoing.

And the problem a lot of times is simply that you have needs, and you have Central Florida, for example, that has huge workloads and it is bursting at the seams. Of course they need another courthouse or they did need it, they have a new one now. But there are also places that do not. I am not familiar with that. I am aware of my circuit. I am aware of the 11th Circuit. Jim Duff would have an idea of the entire country and would be much, much more helpful to you.

Mr. BOYD. I will do that, and I thank you for that counsel and advice. And my question really is, I don't so much have a problem with the judicial process. It is what happens after the Judicial Conference, or whatever makes those determinations, and it goes on a list, then what happens? I think more of the problem is in Congress than it is with you being objective about what the needs are and where they are.

Justice THOMAS. But Jim Duff works with that process and trying to get it through and with the chief judges in the respective areas, and I think it would be extremely helpful to talk with him.

Mr. BOYD. I appreciate that counsel. Thank you, Mr. Chairman.

Mr. SERRANO. Thank you. Mr. Crenshaw.

Mr. CRENSHAW. Just to say in my area of Florida we have a brand new Federal courthouse and it is just state of the art and it is fantastic, and my colleague from Florida if I can help him work on one for his area I would be happy to do that, because he went to the University of Florida, as you all know.

Mr. SERRANO. You realize that this committee oversees GSAs and this will cost me a lot of money, this deal you guys are making.

Mr. CRENSHAW. I don't have any other questions. I would just like to thank both of you for being here today and for the work that you do. We really appreciate it. Thank you.

Mr. SERRANO. Ms. Lee. I wanted to ask one last question and then we will let you folks go and we will see you on TV later. No, I am just kidding.

Incidentally, I like Mr. Culberson and I was not making any comments about those parties. They are real, there are feelings, it is just that everything that is going wrong didn't start January 20th. It has been around for a little while. As long as we understand that.

JUDICIAL AND LEGISLATIVE BRANCH RELATIONS

In its end of year report on the Federal judiciary last year, Chief Justice Roberts talked about the need to improve relations between the judicial and legislative branches of government. Do you have

any thoughts about what steps we, the Congress, and you the courts, can take to improve communication and understanding on matters of mutual interest? I mean, I do not fully understand what he thought the problems were. We get along just fine once a year. But any thoughts?

Justice THOMAS. I am not going to speculate. I think there have been some tensions and there is a sense among Federal judges that there is an effort to not assist them but rather to impede their abilities to do their jobs.

With this committee, I think this committee has been a perfect example of oversight and assistance and prodding and yet helping. We have worked extremely well together on some very important things for the Court. We have worked on security. We have worked on the upgrading of the infrastructure of that building. We have worked on personnel issues. We have worked on our IT problems.

And we haven't always agreed, but you have always been helpful and respectful. I think it starts in the way that you have approached it, with your approach, with your attitude, that we are not going to agree, but it is important that we get the job done.

I do think that the concerns that Federal judges have about some of the legislation, the withdrawal of the COLA, the pay issue has been a very important issue for many Federal judges, concern about the legislation that precludes them from modest things that they were doing, just honorary memberships in clubs. I am not a member of anything other than the, you know, Nebraska Cornhusker clubs or something like that, or motor home associations. But the point is that they see that as negative, it is not helpful.

So it does not foster a good working relationship, and I think perhaps the legislative branch may see other things that they think is an affront to them. But I think that the way that you have approached it and we have worked together is a good example of the relationship that he is hoping to develop throughout the government. The model. I think it has been a wonderful model. When Chairman Wolf was here, when you were more junior and I was more junior.

But I am not going to speculate on all the concerns that the Chief might have. I have my own personal ones, I am not going to list those. And I have my own views of what is happening. But I am not going to in any way impute that to the Chief or to the whole judiciary, but I think you are an example of what is good. This committee is an example of what is good. You are doing your job, but you are helping us to do ours.

Justice BREYER. I agree with that. I think this works well. This is my first time here, but it seems to me that it works very well, because we have a problem, an issue, and we can deal with it together. That is fine, and it is cooperative.

I worked on the Senate staff for a while, and I would say that there is an enormous difference in the institution. If I have to say it in one word it is the factor of time. You have no time. Your time is—you are torn in a thousand directions, you have to make decisions instantly. You have all of these different people you have to talk to, and your job is one where it is minute by minute. Our job

is one where the virtue of the job is to take a long time, often by ourselves thinking out a problem. So they are not in gear, you see.

So we don't come into your life very much, and there is not much reason. You come into our lives all the time. So that is—I have a suggestion which I would like you to follow up on, but I understand if you don't. And that is that you sometimes—and you like to do it and then you never get around to doing it—is come over, call up my office or Justice Thomas's and sit down, have a cup of coffee, and listen to an oral argument. And we will take the time. We are there. And we will say look at my shelf over here this is what my day is like, and it is very different from yours. And once you see that and once you understand how we think about these things, I mean, that helps. I think that helps. You are all invited.

Justice THOMAS. You be careful looking at those shelves. Senator Danforth came over to my office after I arrived at the Court and he saw all the briefs that we have go through and prepare for argument. I will never forget his words. He said Clarence, this is really boring.

Mr. SERRANO. Not everything is as exciting as some people would think. I thank you for your testimony today. I thank you for your service to this country. Maybe what Justice Roberts was speaking about at times is the fact that there was a period of time here, which I hope has ended, where some Members of Congress who didn't like certain decisions coming from courts throughout the country decided that they were going to try to legislate those decisions after the fact.

I am much to the left of the spectrum politically speaking, and so there are many decisions I don't like, but I am smart enough or understanding enough or respectful enough of the Constitution to know that there is a process and that I want this branch to be respected and I have to respect that branch. I feel this branch sometimes lately has been slightly under attack by the whole question of what other branches can do to Congress. And as you said before, and it was a very profound statement, we are just here for a while. These institutions will stay. And some people sometimes say to me you are confusing me, you are a liberal but then you are worried about this change and that change. And I say well, because I want this institution to be here after I am gone. I didn't come here to be part of its destruction. I came here to diversify it and to make it stronger. And I think some folks would love to leave some institutions in shambles when they leave, and they could care less. We don't need any governments. Well, they tried that in some places and it didn't work. And as far as this whole technology thing, which I agree with Mr. Culberson on, it is just a way of letting people know. I know that change sometimes—it took me awhile but now I am crazy on Facebook and twittering and the whole thing. People are not going to in any way infringe on us, but to keep them informed, to let them know that we are people at times. I sometimes put out information that talks about what I am doing at this hearing and I also put down how difficult it was to run 3 miles this morning, and I feel like I was carrying somebody on my back.

Justice THOMAS. That was me.

Mr. SERRANO. And so it is just a new age, we adapt to it and we change with it. But one thing that doesn't change is the respect we have for what you do for this Court and for our institutions. And you know, we disagree, we sometimes are angry and not happy with the way things are going, but at the end of the day both the people to my left—no, there is no such thing—

Mrs. EMERSON. Sitting on my left.

Mr. SERRANO. People sitting on my left and people sitting on my right, we know that we have a pretty good thing going in this country. We just want to make it available to all of its residents and not push it down anybody's throat. Just make it available for people to see how we do it and maybe learn from us.

With that, we thank you.

Justice BREYER. Thank you.

Justice THOMAS. Thank you.

TUESDAY, APRIL 28, 2009.

TESTIMONY OF MEMBERS OF CONGRESS

WITNESSES

**HON. HENRY CUELLAR, A REPRESENTATIVE IN CONGRESS FROM THE
STATE OF TEXAS**

**HON. RUSH HOLT, A REPRESENTATIVE IN CONGRESS FROM THE
STATE OF NEW JERSEY**

Mr. SERRANO. The committee will come to order.

We welcome everyone.

This is the hearing where Members of Congress come to speak to us about any appropriation subject related to their district or for funding at the national level. All committees are having these hearings, and so we will be conducting the hearing today.

We have two folks who have asked for time to speak, Representative Henry Cuellar of Texas and Representative Rush Holt of New Jersey. We may have another Member who comes in. However, I want to make it very clear that, as soon as we are finished with this hearing, we will gavel quickly so some of us can go to other hearings, in my case the Commerce Secretary's hearing.

With that in mind, I recognize and welcome my colleague, the ranking member, Mrs. Emerson.

Mrs. EMERSON. Mr. Chairman, I appreciate your doing this hearing today, and I look forward to hearing from all of our colleagues.

Mr. SERRANO. Our first witness is Mr. Cuellar of Texas.

You are free to put a full statement within the record, and we beg you to stay within 5 minutes.

TESTIMONY OF REPRESENTATIVE HENRY CUELLAR

Mr. CUELLAR. Thank you, Mr. Chairman and Ranking Member Mrs. Emerson, and Chet also.

I put a statement in for the record, but I want to emphasize one thing that the border Members have requested, and that is to put in more money for GSA funding. I think we had asked for \$500 million for the ports of entry.

I think the U.S. has done a good job of putting money into the airports and the seaports but not a good job in putting money into land ports; 80 to 82 percent of all of the goods coming into the U.S. come through land ports. But at the same time, we have not put the money into our ports. And I would ask you to consider our \$500 million request. I think we got the border folks to sign onto this.

Last time, under the stimulus package, it was \$300 million that got added, but it is only a drop. I think the full amount for Customs and Border Protection that we need for the southern and northern borders, I think it was \$4.9 billion. So the \$500 million is just a drop in the bucket. But \$500 million for both the southern

and northern ports of entry would do a lot to help us. We are asking you all to consider that.

I have put some language, some proposed language, to help streamline the process in the building of the ports of entry. There has always been a tug between GSA and CBP, and I ask you to put some strong language to help them consolidate and streamline the process. I know that they say they have done that. But the reality is that to build something in 7 years is too long.

Laredo is an example. We get 13,500 trucks a day, that is a day, just through the ports of entry in Laredo. And to wait 7 years would be too long.

I ask you to consider that request.

[The written statement of Representative Cuellar follows:]

Testimony – Congressman Henry Cuellar (TX-28)
House Appropriations Committee
Subcommittee on Financial Services and General Government

Testimony on GSA – Federal Buildings Fund – Port of Entry Infrastructure

Tuesday, April 28, 2009

**Chairman Serrano, Ranking Member Emerson, and Members of the
Committee –**

Thank you for giving me an opportunity to testify here today. I come before you to strongly urge you to consider my request to increase funding for the land ports of entry modernization. Our land ports of entry have critical infrastructure deficiencies and need immediate attention.

These land ports of entry are vital to ensuring the security of our country as well as invigorating trade, one of the strongest sectors of our turbulent economy. \$720 million was appropriated from the American Recovery and Reinvestment Act (ARRA) and \$300 million went to the General Services Administration (GSA) Unfortunately, GSA did not select funding for a single land port of entry in Texas, which sees more trade volume than almost all other ports in the world.

Testimony – Congressman Henry Cuellar (TX-28)
House Appropriations Committee
Subcommittee on Financial Services and General Government

Last year, 30% of international truck traffic moved through Texas land ports of entry, and Texas exchanged nearly \$100 billion in goods with Mexico, making it #1 in surface trade volume. A majority of truck volume goes through land ports of entry in my hometown of Laredo. It is critical that we move to address their needs in order to continue to facilitate and expand the trade that keeps our nation's export sector strong.

As you know, along with several of my colleagues that represent districts along the southern border, I submitted a request to reconstruct and repair our nation's land ports of entry in the amount of \$500 million. Many of these land ports badly need federal funding to upgrade and modernize as a result of recent increases in trade with Mexico and enhanced security measures over the last several years. Also, I submitted a report language request to ensure that the Committee encourages "*efforts to streamline, avoid duplication and increase efficiency in the completion of land ports of entry construction.*" I strongly urge you to consider both of these requests to improve border security, make trade and travel easier and help our struggling economy rebound.

Testimony – Congressman Henry Cuellar (TX-28)
House Appropriations Committee
Subcommittee on Financial Services and General Government

**Testimony on Project Request for Laredo Community College Small
Business Center and Texas Lutheran University Small Business Center
in the Small Business Administration Salaries and Expenses Account.**

I also urge you to consider my request to develop a small business center at Laredo Community College that serves the South Texas Region and encourages students to enter the small business industry and the petrochemical industry, as well as a Small Business Center at Texas Lutheran University

The centers will utilize technology, education and training to create an efficient and effective regional collaboration of programs, students, community leaders, employers, ISDs, colleges, universities, local governments and industry associations.

Both of these centers will help prepare a dynamic skilled workforce to meet global demand, bolster industrial development and foster needed economic growth in Texas.

Mr. SERRANO. Thank you.

The time issue that you mentioned, you say to expedite the program, what seems to be the problem as they tell you?

Mr. CUELLAR. What they tell us is, you basically have two agencies. You have the landlord, which is GSA, and then you have the tenant which is CBP, the border protection; Customs and Border Protection CBP, should I say.

They have one priority, and they have another priority, and to try to get them together and streamline the process, I have gone through this over and over with them. They say that they have streamlined the process, but I think they can do this quicker. Seven years, in my opinion, maybe I am not used to Federal Government standards, but I still think that type of limitation is too long.

If you can put some strong language, even though they will come up to you and say we have done this, but I think they can streamline and consolidate a lot of the process.

Mr. SERRANO. If we consider that in our argument, we say what do some people, some experts, some professionals claim this can be done in?

Mr. CUELLAR. I would say in a lot less. I would say about 3 years. For example, if you get the cities on the border, the city managers, they can tell you that this can be done a lot quicker than the time that they are doing it. I mean, the Federal Government just moves a lot slower.

Mr. SERRANO. Thank you.

Mrs. Emerson.

Mrs. EMERSON. What is puzzling to me, seriously, Henry, is that you have got GSA getting \$5.5 billion of stimulus money basically to do upgrades of buildings and stuff like that. But in this particular case, to me, if that is such a critical port of entry, then it is imperative that we get it done. But I guess DHS in essence is the one who has to sign off on it since Customs and Border Patrol comes within that Department, right?

Mr. CUELLAR. Right. And the thing is, when you look at the budget for GSA, the ports of entry are about this much because the rest are Federal courthouse buildings in New York and Chicago and other places. So the ports of entry is just a small portion of their budget. And, therefore, their priorities, in my opinion, are just less.

But if you look at it, over 80 percent of all the goods coming into the U.S. come through land ports. Why have we not done more? This is not just the southern part, but also in the northern part.

Mrs. EMERSON. Did not GSA get some emergency money in 2008 to be working on this? I think they did.

Mr. CUELLAR. I don't know what they got on that. But under the stimulus package, the signed amount was \$300 million. Total was \$720 million, but \$420 million went to CBP for the CBP owned ports of entry. But GSA, which owns the majority of the ports of entry, just got \$300 million on the stimulus package. And again, their needs, I believe, are closer to \$5 billion. And \$300 million is not going to do that; \$500 million is not a lot, but I thought it was reasonable for the committee.

Mrs. EMERSON. What do you get for the \$500 million?

Mr. CUELLAR. It depends what they have. It depends. They have a priority list that unfortunately they jumped around. They jumped around on even the priority list that they had. It depends on what ports they cover and what priority they have. They could cover some ports, but not all of them. It just depends on how far they go down the priority list. I believe you all should have a list. If you haven't seen it, I would ask you to get the GSA priority list and then ask them how the stimulus money, and I don't want to get into the politics of it, but the stimulus package went from number one and number two, and then they jumped down to number 25. So they didn't even follow their own GSA. We have a meeting with them next week.

Mrs. EMERSON. It did not just happen with ports of entry.

Mr. SERRANO. Thank you.

Mr. Edwards.

Mr. EDWARDS. Mr. Chairman, thank you.

I just want to thank you, Henry, for bringing this to our attention. The numbers are astounding: 30 percent of international truck traffic moves through Texas land ports of entry, and is \$100 billion in goods with Mexico. Clearly, there is a need here, and thank you for bringing it to the attention of the chairman and the ranking member of the committee.

Mr. CUELLAR. Again, I know you have got to move on, but I would ask you to just to look at the GSA or the Customs and Border Protection needs that they have. I think you will see about \$4.9 billion. And I know \$500 million is not a lot, but if you start looking at the long plan, I would ask you to consider that, because over 80 percent of all of the goods come through land ports, not seaports or airports, we have to support seaports and airports, but over 80 percent of the goods coming into the U.S. come through land ports, but we haven't really done much on that.

Thank you. I don't want to keep you.

Mr. SERRANO. Thank you.

Our next witness is the gentleman from New Jersey, Mr. Rush Holt.

You are free to submit a statement for the record.

TESTIMONY OF REPRESENTATIVE RUSH HOLT

Mr. HOLT. Chairman Serrano, Ranking Member Emerson, Member Edwards, I thank you for giving me an opportunity to testify in support of the request for a billion dollars in funding for election reform programs for the Election Assistance Commission for fiscal year 2010.

In the half dozen years since HAVA was enacted, citizen watchdog groups have been created across the country that have tracked, reported and catalogued irregularities in the elections and failures of the systems.

In 2008, for example, one of these groups, Our Vote Live Hotline, received reports of almost 2,000 voting machine problems in a dozen States.

Now while some might argue that the lack of a meltdown in the most recent Presidential Election suggests that voting system reform is no longer necessary, in fact, I think it suggests just the opposite. Between 2003 and the 2008 election, 31 States have estab-

lished some form of paper ballot requirement. Eight more are using paper ballots without having them mandated, and 18 have established audit requirements.

So 2008 was one of the first elections, in fact, was the first election that we have experienced since the advent of computer-assisted voting, which benefited largely from what should be mandated, which is auditable, independently audited elections. In other words, many of the States are making the transition in the right direction.

The Election Assistance Commission under HAVA from the Federal Government should be offering more assistance to them, and that is the reason for this request for funding.

The ongoing recount of the U.S. Senate race in Minnesota illustrates why we need these reforms. The Minnesota Secretary of State Mark Ritchie, as the person responsible for the State's routine audit and recount, has sung the praises of their paper-based, optically-scanned ballot system because it made it possible for him to do a recount quickly, fairly, accurately and with a high degree of trust. Without that system, he couldn't even have done a meaningful recount.

I want to make clear that not only are paperless voting machines fundamentally insecure and not only do software errors occur on every voting system used in every State in this Nation, but the United States appears to be the only developed nation in the world that uses computer-assisted elections without requiring some sort of voter-verified paper ballots as an independent audit mechanism.

An analyst from the CIA testified at a public meeting of the Election Assistance Commission Standards Board and said in a couple of quotes here, "wherever the vote becomes an electron and touches a computer, that is an opportunity for a malicious actor potentially to get into the system and tamper with the vote count or make bad things happen."

He also said, "The bottom line is that all the countries I have looked at, about 36, 37 countries, all the scenarios by which they use electronic voting, they produce a paper ballot receipt, and that is part of the social contract they have."

It is time the United States took the lead again in verifiable, reliable elections and established ourselves as a model of open and transparent democracy for the rest of the world.

I commend the committee for its recognition in the fiscal year 2009 bill of the problem of unverifiable, accessible paper ballot voting. As you know, the bill included language explicitly directing \$5 million in funding to the study of voting systems that ensure accessibility for voters with disabilities so that such voters can vote privately and independently, "including through the use of official paper ballots."

And you included \$1 million in funding for pilot programs for preelection logic and accuracy testing and post-election audits.

I would offer to you that the experience of the States in these areas confirms that they are ready to implement more broadly and rigorously requirements such as we are talking about here, and they simply lack the funding to do so. Fully funding HAVA would alleviate that problem.

I thank you.

[The written statement of Representative Holt follows:]

Testimony of Rep. Rush Holt
Before the House Committee on Appropriations,
Subcommittee on Financial Services and General Government
April 28, 2009

Chairman Serrano, Ranking Member Emerson, and distinguished members of the Subcommittee, thank you for providing me with an opportunity to testify today in support of my request for \$1 billion in funding for Election Reform Programs for the Election Assistance Commission in your Fiscal Year 2010 appropriations bill. This funding would more than fully fund States under the Help America Vote Act (HAVA), and therefore ensure that they are able to conduct all future elections on accessible paper ballot voting systems and conduct routine random audits of electronic tallies.

While some might argue that the lack of a meltdown in the most recent Presidential election suggests that voting system reform is not necessary, in fact it suggests exactly the opposite. Between 2003 and the 2008 election, 31 states have established some form of paper ballot requirement, eight more are using paper ballots without having mandated them, and 18 have established audit requirements. That is, 2008 is one of the first elections we've experienced since the advent of computer-assisted voting which benefitted largely from what should be mandated: auditable, independently audited elections.

The ongoing recount in the U.S. Senate race in Minnesota illustrates why we need this system. Minnesota Secretary of State Mark Ritchie, as the person responsible for the state's routine audit and recount, has sung the praises of their paper-based, optically-scanned ballot system because it made it possible for him to do the recount quickly, fairly, accurately, and with a high degree of trust. (The ongoing court challenge is beside the point that the Secretary could conduct a reliable count.)

My April 2 letter to you described two other real-world examples of why paper ballots and rigorous routine manual audits are critically important to the integrity of elections, and I won't repeat them here. Thousands of irregularities and errors are reported on electronic voting systems in every election. In the half a dozen years since HAVA was enacted, citizen watchdog groups have been created across the country that have tracked, reported and catalogued those irregularities and failures in their efforts to lobby their legislators to mandate independently auditable paper ballot voting systems. In 2008 alone, for example, the Our Vote Live hotline received reports of almost 2,000 voting machine problems in all but 12 states.

I want to make it clear: not only are paperless voting machines fundamentally insecure, and not only do software errors occur on every voting system used in every state and county in the nation, but the United States appears to be the only developed nation in the world that uses computer assisted elections without requiring voter verified paper ballots as an independent audit mechanism. In February 2009, an analyst from the U.S. Central Intelligence Agency (CIA) testified at a public meeting of the EAC Standards Board about computer-assisted elections as conducted in other countries. Among his

observations, as reflected in a publicly-available transcript of the hearing, are the following:

“Wherever the vote becomes an electron and touches a computer, that's an opportunity for a malicious actor potentially to get into the system and tamper with the vote count or make bad things happen.”

“Any computer hooked up to the Internet either through a wire or through a wireless connection is a porthole for hackers. You heard that. I'm here to confirm it very simply.”

“Bottom line is all the countries I've looked at, . . . about 36, 37 countries, all the scenarios by which they use electronic voting, they produce a paper ballot receipt, and it's part of the social contract that they have.”

And yet, in the most advanced democracy in the world -- the United States -- there are still states that do not provide that protection to their voters.

Its time the United States took the lead again, and reestablished itself as the model of open and transparent democracy for the rest of the world. Many states have already powerfully demonstrated a desire to do that, even after the equipment conversion deadlines in HAVA elapsed in November 2006: according to the most recent voting equipment deployment report from Election Data Services, between 2006 and 2008, jurisdictions serving 10 million voters converted from direct recording electronic (DRE) voting systems to paper ballot optical scan voting systems. In fact, every jurisdiction that made a change in its voting equipment between 2006 and 2008 converted to a paper ballot optical scan voting system.

Every state in the nation is facing economic difficulties, and all of the states and counties still using paperless electronic voting equipment would be able implement these critical security measures before the next election if you included full funding for them under HAVA for Election Reform Programs in your fiscal year 2010 appropriations bill.

I commend the Committee for its recognition in the fiscal year 2009 bill of the problem of unverifiable, accessible paper ballot voting. As you know, that bill included language explicitly directing \$5 million in funding to the study of voting systems that ensure accessibility for voters with disabilities so that such voters can vote privately and independently, “including through the use of official paper ballots,” and included \$1 million in funding for pilot programs for pre-election logic and accuracy testing and post-election audits. I would offer that the experience of the states in these areas confirms that they are ready to implement broadly and rigorously requirements such as these, and the others my bill calls for, but simply lack the funding to do so. Fully funding HAVA would alleviate that problem.

Thank you again for affording me the opportunity to speak to you today about this important matter.

Mr. SERRANO. We thank you for your testimony.

As you know, the last administration would try to zero out HAVA. So even coming up with \$105 million or \$106 million was a big deal. I don't know that anyone can commit themselves to a billion dollars anywhere in any of these subcommittees, but you can rest assured that this continues to be a top priority of this committee, the fact that we have to have a system that can be verified. We have had too many situations where these recounts just take too long. There has got to be a better way.

Mr. HOLT. I am pleased to hear you say that.

Mr. SERRANO. Minnesota might be another issue. Has that been decided in any way yet?

Mr. HOLT. It is still in the courts. But my point is, if I may repeat, they had something to recount. There were well-marked, well-collected ballots, not just electrons on a hard drive somewhere or a memory somewhere in the ether. So in a real sense, that is a success story, and the secretary of State will tell you so.

So, again, I am pleased to hear you say that. I often remind students and adults that a self-governing country works only if you believe it does. If there are doubts about the electoral process, it can undermine everything else.

Mr. SERRANO. Absolutely.

Mrs. Emerson.

Mrs. EMERSON. I happen to agree that we have to have verifiable, auditable records. Let me say that up front.

As far as we have come with computer technology, I still get a little nervous. Obviously, we worry about things like a smart grid being hacked into, and the same can happen in this particular case. I do agree with you.

I would like to know, with the billion dollars, do we have a breakdown by State of how much each State needs to fully implement HAVA?

Mr. HOLT. The Election Assistance Commission has records of money requested, spent, and unspent for the various States.

Mrs. EMERSON. And there is money unspent, correct?

Mr. HOLT. For some States there is. I don't know the details.

The Election Assistance Commission is another whole question. I mean, I think the committee would do well to look at that. There probably is more attention that should be paid from authorizing committees. But I do think that this is something that your committee should also pay some attention to.

But I am proposing that the assistance to the States go through the Election Assistance Commission the way that HAVA was set up.

Mrs. EMERSON. We will try to get some more of that information. Thanks, Rush.

Mr. SERRANO. Mr. Edwards.

Mr. EDWARDS. Rush, just one question on the Minnesota recount. Could you have someone look at the question of whether, if they had not had a paper-based system, would the outcome have been different based on the counts that are valid as of today through the court system? It wouldn't undermine your argument if the outcome weren't changed, but it would certainly add great power and emphasis to your argument if, in fact, a United States Senate seat

would have been, the outcome would have been different if it had not been for the fact that they had a paper-backed system.

Mr. HOLT. I am not expert on the lawsuit and the legal challenges in Minnesota. But I believe it has to do with both the eligibility of the voters and the intentions of the voters. In a purely electronic system, who votes, who signs in on election day is still a matter of record and can be challenged. But the intention of voters, any information about that is lost. An electron in a memory says nothing about what the voter intended to do.

So the secretary of State of Minnesota would say, as others in other States that have made the transition, and I think it is worth noting that every jurisdiction in the country that has made a change in voting equipment between 2006 and 2008 converted to a paper ballot optical-scan voting system; no one was going the other way.

Mr. EDWARDS. Is this where they fill in with pen or pencil the circle?

Mr. HOLT. Yes. It could be done manually. It could be done by a ballot-marking device that would assist somebody who is unwilling or incapable of marking the ballot manually.

So, however the ballot is marked, that would be the vote of record. It can be counted electronically or by hand in any manner. But there is a permanent record of the voters' intention, and that is the key point.

In Minnesota, or in other States, if it were a purely electronic system, they could give you the result at 9:05 p.m. and it would not be subject to question ever again, even if it is not right.

Mr. EDWARDS. Thank you.

Maybe the appropriate time would be after the final decision is made on the Minnesota Senate race to contact the Secretary of State of Minnesota and just ask that question, that hypothetical question. Had Minnesota not had a paper system, given the ballots that they counted didn't count, how they counted them, would the outcome have been different?

Thank you. Thank you for your testimony.

Mr. HOLT. Thank you, Mr. Edwards.

Mr. SERRANO. Ms. Lee.

Ms. LEE. Thank you very much and thank you for your persistent and consistent leadership on this. You would think by now, given all of the problems of the past and given the work that you have done, it would be done. You would think that it would be done. This is the essence of our democracy, and we have been close to the edge, I think, in what we have seen over the last few elections.

I just wanted to ask you about the State-Federal role in this. Where are we? Are we saying with your request here, and what is it, \$5 million?

Mr. HOLT. No, no, the request is \$1 billion. In the 2009 appropriations, there was \$5 million. That included \$1 million for pilot programs and preelection testing for a study of voting systems to ensure accessibility.

Ms. LEE. So are we allowing the States now to make the decision of whether or not they want to go to paper ballots?

Mr. HOLT. For 200 years we have allowed the States to run their own elections, including Federal elections. The departure from that, if my history is correct, was the 1965 Voting Rights Act. It was the first time that the Federal Government actually got involved in the administration of elections.

So I think the principle has been established that the Federal Government can and should ensure the integrity.

Ms. LEE. Are we saying then that the Federal Government, we are directing the States to use paper ballots?

Mr. HOLT. The States are voting with their feet. More and more are moving to paper ballots; and every State that made a change, every jurisdiction, county or State that made a change in its voting equipment between 2006 and 2008, converted to a paper ballot optical-scan voting system, not the other way, even if they had already invested money into purely electronic voting and so forth.

So your committee, and just to be clear, I maybe wasn't complete enough in my answer a moment ago, your committee, as the Chairman pointed out, appropriated \$100 million for HAVA in the current year for fiscal year 2009. My request is that you increase that tenfold to assist the States in doing what they are already choosing to do, moving toward reliable, verifiable, accessible voting.

Ms. LEE. But if a State chooses not to do that?

Mr. HOLT. I have other legislation that would set Federal standards.

Ms. LEE. Okay. I just wanted to make sure that we were clear on the distinction between that legislation and this funding request.

Thank you. Thank you very much, Congressman Holt, for your leadership.

Mr. SERRANO. We thank you for your testimony.

I can tell you, as one who, and it is funny, although it wasn't funny then, in 1985, I ran for something called Bronx Borough President, which is the equivalent of sort of a county executive, and they are still looking for missing ballots.

Mr. HOLT. I lived there a few years before that. I was not there at the time to vote for you then. I am sure I would have.

Mr. SERRANO. I lost an election. Out of 150,000 votes, I lost by less than 1 percent, and they are still looking for votes. And then the Justice Department got involved. It was very interesting. The Justice Department, and I am not a lawyer, but they gave me reverse attorneys' fees. I understand that means that you won the case. Then they ordered New York City, the Bronx, to be put under Voting Rights Act scrutiny more than it was before. It then mandated that the Board of Elections advertise in a special way to people telling them that they didn't need their voting registration card to vote. In other words, everything that I claimed that was done against me, the Justice Department agreed with. But they couldn't call for a new election because the person who was there had been removed to move to a bigger house at the Federal expense level, if you know what I mean, and the person who was appointed by the City Council was not the one who had been involved in the first election, so how do you remove him? But I won in the end because those are term-limited offices, and I am in Congress.

Mr. HOLT. We are pleased to have you in Congress and in the Chair.

Mr. SERRANO. And as Ms. Lee said, we thank you for just continuing to be a leader on this.

And Mr. Edwards and Mrs. Emerson know that you are what we call in Spanish a “nudge” on this issue.

Mr. HOLT. Thank you.

Mr. SERRANO. That concludes our hearing for today. The committee will adjourn. We thank you.

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